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CORRESPONDENCE

Power book

To the editors:

Samantha Power is entitled to disagree with everything in my book but not to misrepresent its argument beyond recognition ("Stages of Justice," March 2). Power first systematically disregards every qualification in my position regarding the value of prosecuting perpetrators for mass atrocity. Then, not surprisingly, she finds that position grossly exaggerated and lacking nuance.

She concentrates her fusillade on the issue of public stagecraft in such trials (nine pages in a 320-page book). But my claims are quite cautious and modest: I argue that such stagecraft has become pervasive in these trials, that we ought therefore to ensure that it is done in ways consistent with liberal legality, and that it is wrong to assume—as many do—the logical impossibility of successful liberal dramaturgy.

Power ends up getting my view off by 180 degrees, portraying me as some crazy moral relativist, when I'm a moral objectivist; as a flaming postmodernist, where I'm defending positivism and the possibility of empirically valid truth claims; as a sympathizer of Stalin-like show trials, where I'm supporting liberal legality; and even as a crypto-revisionist on the Holocaust, when my strong Jewish identity clearly informs the entire book. She mocks my language, taking it seriously and at face value, where I'm clearly spoofing the views of those with whom I completely disagree.

These misunderstandings and resulting misrepresentations have a common source. I was aware that writing a serious book for a nonspecialist audience always has many risks. But I did not imagine that one of them would include the assignment of its review by a leading journal of opinion to a young news reporter completely unfamiliar with the fields of legal and social theory that my book engages.

Power seeks to contrast herself—as a reporter who has really "been there"—with ivory-tower academics like myself who presumably have not. She makes no mention of my six months of interviews in Buenos Aires with all affected by its "dirty war," victims, prosecutors, and perpetrators alike.

MARK J. OSIEL
Iowa City, Iowa

To the editors:

Samantha Power's review of Mark Osiel's

Mass Atrocity, Collective Memory, and the Law is right to stress the dangers of relativism inherent in the kind of program of justice as "spectacle" that Osiel advocates. It seems every age gets the justice it deserves, and what Osiel offers us is what might be called "postmodern justice," in which the content of justice, namely truth, is sacrificed for the form of spectacle. To confuse the power of justice with the power of spectacle is to miss the whole point that the victims of terror in the twentieth century have almost always been victims of spectacle as well. To advocate spectacle as a justice surrogate is to foist on the victims of terror a repetition of the past dressed up in civilized, postmodern form.

THOMAS CUSHMAN
Wellesley, Massachusetts



Samantha Power replies:

I do not describe Osiel as a moral relativist, a postmodernist, a Stalinist sympathizer, or a crypto-revisionist. I simply argue that these groups would be heartened by the case he makes for "liberal show trials." He believes his checks and caveats are sufficient and his aims compatible; I believe they don't alter the fact that his aims and means are in contradiction.

Miscount

To the editors:

Paul Glastris has given us a further reason to ignore Al Gore's National Performance Review ("Undercovered," March 2). Glastris says, "NPR's latest annual report is filled with impressive-sounding anecdotes," including a defense-distributing agency that "reduced its delivery times by 300 percent."

Apparently, Al Gore is not only rein-

venting government but also reinventing mathematics. One can only reduce something by 100 percent because that's the whole damn thing! Even a journalist should know that.

ED PHILLIPS
Kalama, Washington

Greening America

To the editors:

As an architect and environmentalist, I agree with Gregg Easterbrook's goal: we need to simplify and improve environmental law ("Greener Pastures," March 2). But his formula to conserve one acre for each acre developed is naïve because not all natural or developed acres are equal. We need a national policy that balances the needs of both environment and development.

Each newly developed acre should contribute to or collect from the National Conservation and Development Fund in proportion to its population density. Using a progressive scale, reduced densities should contribute to the fund, and increased densities should collect from it. Developed land that redevelops into increased population should also collect.

This give-and-take is necessary because development that rewards sprawl penalizes the natural environment and the man-made towns, cities, or megacities it depends upon. As opposed to their adversarial tradition, federal bureaucracies could then build on common strategies.

ALFREDO M. GONZALEZ
Clarks Summit, Pennsylvania

To the editors:

Gregg Easterbrook is wrong about the Endangered Species Act. Our national symbol, the bald eagle, has gone from the brink of extinction to populating the lower 48 states, a shining example of ESA's success. Not only is the law helping to stem the extinction tide, its enforcement has not harmed the economy, and it continues to be extremely popular with the American public.

While Easterbrook's proposal to finance conservation land purchases with a \$1.5 billion annual tax on development might not pass muster in the current Congress, the basic concept is worthy of serious discussion. Fortunately there's already a practical means for purchasing important recreational and environmental lands—the Land and Water Conservation Fund—that allows for the purchase at fair-market value of the most threatened privately owned properties nearby or surrounded by national parks, national forests, and other public lands.

Although about \$900 million goes into

the fund each year, Congress and the Clinton administration have recently failed to appropriate this amount, preferring to use the fund to mask the size of the federal deficit. In its recent budget proposal, the administration proposed appropriating \$270 million to LWCF acquisitions. But using the fund to the fullest extent possible would go a long way toward "setting aside equal amounts [of land] for biodiversity and for our descendants," as Easterbrook recommends.

WILLIAM H. MEADOWS
Washington, D.C.

Dealing death

To the editors:

Charles Lane's problem with capital punishment centers on the possibility that human beings and their institutions err ("Lethal Objection," March 2). His absolutist position against the death penalty is not widely shared, though most would agree that the execution of any innocent person is truly regrettable.

However, warts and all, the complex appellate systems do work. The slight risk of executing an innocent person is outweighed by the injustice served by keeping willful, inhumane criminals alive until their natural deaths. At the end of

all the motions, hearings, appeals, and legal meanderings, if no reversal has occurred, 99 out of 100 times the right person stands to face execution. Most Americans are willing to accept these odds in the interest of law and order.

JAMES R. EDWARDS JR.
Springfield, Virginia

Liar, liar

To the editors:

I thought Sidney Blumenthal had returned to edit TNR after reading Michael Sandel's attempt to use the Talmud—of all things—to justify Bill Clinton's deceptions ("White Lies," March 2).

Clinton is not accused of lying to some nosy neighbor about his sexual relationship with his own wife, which might indeed be a "white lie," but rather to a federal court trying to determine if he used the power of his elected offices to sexually harass and exploit women. I seem to remember something in Jewish law against bearing false witness and committing adultery. So I imagine the rabbis—unless they are sophists like Sandel—would be less sanguine than he is about Clinton's sins.

MARC ROGERS
Wortham, Texas

To the editors:

Michael Sandel argues that, if deception can be justified for the Talmud and for Kant, then it might be justified for the president as well. But Sandel weakens his argument by concluding the American people "have decided that [Clinton's] sex life ... does not deserve to be studied."

If that is the bottom line—and, indeed, it is the concluding line of his article—then why should the president have to engage in the unseemly (even if not, according to Sandel, immoral) act of lying? Why doesn't the president just say, "My private life is my personal business"? Why commend a person for lying when there was no need and no pressure for him to say anything in the first place? It's hard to justify *that* as a moral position.

RABBI STEPHEN LISTFIELD
Pompton Lakes, New Jersey

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on Recruiting Marines

Bruce Springsteen

on the Power of Stories

Edward Hirsch

on the Soul of Poetry

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Photographing the People's Music

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FROM WASHINGTON

Unslick Willey

Kathleen Willey is pretty clearly telling the truth about what happened between her and Bill Clinton on November 29, 1993. And the episode is pretty clearly a far more offensive matter than Clinton's alleged dalliance with Monica Lewinsky. With Monica, it was consensual. The president's advance toward Willey even included a modest measure of physical force. It was made to a married woman whose husband was an acquaintance of the president and the first lady. It took place as that same married woman was asking the president for a paying job so she could rescue her family from financial disaster. And it started in the Oval Office during business hours, with a Cabinet officer cooling his heels outside. Yuck!

So the president is a groper and a liar. He must be held accountable. The question is: How? A sexual assault charge—as Patricia Ireland of the National Organization for Women and more than one newspaper columnist have implied? Squeezing a woman's breasts and placing her hand on one's trousered crotch could conceivably be construed as a literal violation of certain battery statutes. But, if that makes Bill Clinton guilty of a felony, then so are millions of other American men. Do we really want to take the criminalization of sex that far? More to the point: I'd like to see anyone convince a jury—or a House committee—beyond a reasonable doubt that the president is guilty of assault based on nothing more than Willey's word against his. No ordinary prosecutor would even waste his time on such a case.

What about a sexual harassment lawsuit? A sexual harassment claim usually requires some continuing campaign of abuse and/or innuendo directed against an employee by an employer or another employee—a campaign so sustained and unbearable to any “reasonable woman” that it creates “a hostile work environment.” By Willey's own account, Clinton's was a one-time lunge. No repercussions followed, and she gave no

subsequent indication that she found the White House anything but a congenial work environment. To the contrary, she still wanted a job there, and she wrote him notes calling herself the president's “number one fan.” (Yes, it's hypocritical for presidential spinmeisters like Ann Lewis to make this argument, given that they said the opposite when it was shown that Anita Hill followed Clarence Thomas around from job to job. But I thought Thomas had a point then, and Clinton has a point now.)

Furthermore, it seems that some of the president's critics are trying to have it both ways, too. Maureen Dowd of *The New York Times* notes, for example, that women often stay with lecherous employers like a Clinton (or a Thomas or a Bob Packwood) because they have no alternative—they need “their bridge to a good job, a good recommendation, and a good contact.” But, in her view, that shouldn't, and doesn't, prevent them from turning this lechery “to their advantage,” through a subtle form of extortion. Dowd speculates, with approval, that Willey's post-grope pleas for a job may have been reinforced by an implicit “or else I'll blab.”

Dowd has astutely analyzed the underlying Clinton-Willey dynamic. I have just two problems with her argument. First, it's absurd to claim that a woman can't abandon an objectionable employer for fear of being blacklisted everywhere else. If Willey really needed income that badly, and really felt that offended by the president, she would not have limited her job search to the White House only. Second, Dowd overlooks some of the wider implications of her view. Workplaces in this society can function under a rule that says women have not only the right but the duty to sue bosses who sexually harass them. Or, our offices and factories could get along under a rule that says women can't sue, but can practice stealth extortion. But we will have only unfairness and uncertainty if we try to operate under a rule that arbitrarily says, as Dowd does, “bosses beware”—and then leaves it up to each individual woman to choose what legal or nonlegal weapon suits her at any particular moment.

That leaves perjury. By now, we've heard it a million times: Willey's story and Clinton's story collide; therefore, “someone committed perjury.” Well, someone, probably the president, told something other than the truth under oath. But that is not necessarily perjury. The federal perjury statutes require not only that the false statement be about a “material matter”—it's still debatable

how “material” the Willey episode will be to the Paula Jones case—but also proof that the accused made the false statement knowing and believing that it was false. How is anyone ever going to prove that about Clinton in this case?

You can't sustain a perjury charge based on a mere conflict between two sworn statements. You need independent evidence. And, in this case, the only corroboration for Willey's account comes from Linda Tripp, who says Willey confided in her just after the meeting ended. But, in Tripp's version, Willey looked happy upon emerging from the Oval Office, whereas Willey now says she was upset. That alone would create a reasonable doubt, even if Tripp weren't an anti-Clinton ax-grinder. Not to mention the fact that Willey's lawyer tried to sell her story to a publisher for \$300,000—because she's still desperate for cash to make restitution to a client from whom her late lawyer-husband had allegedly embezzled and whom Willey declined to pay from the proceeds of her husband's \$1 million life insurance policy.

Sometime soon, probably around the time the Jones case goes to trial in May, Ken Starr is going to send a report full of what he considers impeachable offenses to the House of Representatives. I think the House, for reasons both political (they don't want to make Al Gore the incumbent in 2000) and legal (see above), will investigate and do nothing.

Congress could, however, do what Senate Majority Leader Trent Lott has suggested: censure Clinton for his misbehavior. Most of Lott's colleagues dismissed the idea as a toothless gesture, which it would be. But Lott's impulse—to find a way short of impeachment to punish Clinton—was not inappropriate, given that the president has already paid a heavy price in the form of the scandal itself. Remember how the White House used to boast that the second term would be dedicated to securing Clinton's “place in history”? Well, now Clinton will always be remembered, at least in part, as a sleazy womanizer who recklessly groped a female aide in the sanctity of the Oval Office, then brazenly lied about it. And meanwhile, thanks to the pending litigation, he'll be an especially hobbled lame duck. Except for actual impeachment and removal, nothing could hurt Clinton more. Considering that he has also presided over peace and widely shared prosperity, I'd say this punishment fits the crime—and then some.

CHARLES LANE

APRIL 6, 1998

WITH BURNING ANXIETY

An apology is not an apologia, or it should not be. But *We Remember: A Reflection on the Shoah*, the statement of the Vatican's Commission for Religious Relations With the Jews, is an apologia disguised as an apology. After eleven years, the Catholic Church has produced an expression of regret in a spirit of extenuation, a document about "the unspeakable iniquity of the Shoah" (as John Paul II rightly describes it in his introduction) in which sorrow is constantly vitiated by a spiritual and historical niggardliness. The text confesses, but reluctantly and incompletely. It seeks the truth, but grudgingly; which is to say, the truth is not all that it seeks.

The air of reluctance is apparent almost from the start. Consider this sentence: "Before this horrible genocide, which the leaders of nations and Jewish communities themselves found hard to believe at the very moment when it was being mercilessly put into effect, no one can remain indifferent, least of all the Church..." Now compare it to the sentence that it might have been, without the subversion of candor by that subclause: "Before this horrible genocide, no one can remain indifferent, least of all the Church..."

Or consider the account of Jewish-Christian relations that the document presents. The history is "a tormented one," it says, and then it adds, "In effect, the balance of these relations over two thousand years has been quite negative." The balance? From the standpoint of tormentedness, surely, there has been only an imbalance. And then the narrative begins: "At the dawn of Christianity, after the crucifixion of Jesus, there arose disputes between the early Church and the Jewish leaders and people who, in their devotion to the Law, on occasion violently opposed the preachers of the Gospel and the first Christians." What equivalence is this recollection of antiquity supposed to establish?

Or consider this summary of the ugly situation in the Middle Ages: "Sentiments of anti-Judaism in some Christian quarters, and the gap which existed between the Church and the Jewish people, led to a generalized discrimination, which ended at times in expulsions or attempts at forced conversions." In some Christian quarters? No, in many Christian quarters, even in most Christian quarters. Moreover, those "sentiments of anti-Judaism" were also sentiments of anti-Semitism, and they sometimes ended also in torture and in murder.

But it is the next sentence that is the really egregious one: "In a large part of the 'Christian' world, until the end of the 18th century, those who were not Christian did not always enjoy a fully juridical status." It was not a large part of the "Christian" world that kept the Jews low, it was a large part of the Christian world. A little punctuation can twist a lot.

From the document's rendition of the Church's response to Nazism, you would conclude that it stood clearly and defiantly against the injustices of Hitler's Germany. The few Catholic priests who preached courageously against Nazism are noted, as if they were the rule. *Mit Brennender Sorge*, or *With Burning Anxiety*, the encyclical of 1937 in which Pius XI condemned Nazism, is also adduced, as if it condemned anti-Semitism. It did not, and it referred to the Jews as the people "destined to crucify Him." Pius XI's quarrel was not with Nazi racism, it was with Nazi paganism. He denounced "pre-Christian Teutons [who] ... elevate a somber, impersonal destiny above the personal God, who make race or Folk or the state ... the object of an idolatrous cult." And the Vatican's new document persists in this straitened theological conception of the Nazi assault on decency. "The Shoah was the work of a thoroughly modern neo-pagan regime," it declares. "Its anti-Semitism had its roots outside of Christianity, and in pursuing its aims, it did not hesitate to oppose the Church and persecute her members also."

Those are saddening sentences, because they represent a casuistic reading of history. The Holocaust was not merely the work of a "regime." It was the work of a totalitarianism, which is to say, it was perpetrated and abetted by whole societies, and those societies were Christian. Millions of people cannot be ostracized, persecuted, arrested, tortured, shot, deported, concentrated, gassed, and burned by a "regime." Christians were certainly persecuted by the Nazis, but the Holocaust was not a war against the Christians. The anti-Semitism of the Nazi satraps and the Nazi ideologues was certainly not Christian anti-Semitism, but it owed its rapturous reception in Germany and elsewhere to centuries and centuries of Christian anti-Semitism. All this is elementary and incontrovertible.



"But it may be asked whether the Nazi persecution of the Jews was not made easier by the anti-Jewish prejudices imbedded in some Christian minds and hearts." It may well be asked. So, then, "Did Christians give every possible assistance to those being persecuted, and in particular to the persecuted Jews?" Here is the Vatican's answer: "Many did, but others did not." These words are not saddening. They are maddening. For the very opposite was the case. *Many did not, but others did.* And this grotesque misrepresentation is followed by praise for the role of Pius XII in fighting Hitler and rescuing Jews, which is annotated by an abject footnote listing Jewish testimonials to that holy, horrible man. (In 1958, when Pius XII died, Golda Meir sent a fulsome message of condolence to the Holy See. Why does the Vatican attribute so much significance to the foreign minister of a state which it refused to recognize?)

The Vatican document concludes with a characterization of itself as "an act of repentance (*teshuva*)."
Teshuva is the Hebrew word for repentance, and it is affecting to see this word in this setting. But *teshuva* is an exceedingly rigorous thing. Here is Maimonides, in his authoritative exposition of *teshuva*: "He is most praiseworthy who makes his confession great and thorough.... He must admit to all the details of his sin.... He who is too proud, and conceals some of his iniquities—his repentance is not complete." In the half a century since the Holocaust, a great historiography has arisen, a colossal and collaborative work of documentation, and it has destroyed the grounds of ignorance or avoidance. And yet the Vatican still flees from frankness and proposes to base a "reflection on the Shoah" on less than all that is known. Alas, sanctity cannot substitute for veracity.

It is not for the sake of the Jews that the Vatican must find its way to a full accounting of its past. It is too late for the Vatican to help (or to hurt) the Jews. No, it is for the sake of the Catholics, many of whom have reckoned with the modern career of their Church more honestly than its vicar. And for the sake of the truth, which God enjoins, and man enjoins, too. •

NOTEBOOK

TAX TALK: Over the past few months, a vapid yet popular idea has taken hold among Republicans in Congress: they want to pass a bill that will end the income tax in 2001 and figure out then how to replace it. This proposal had all the hallmarks of political genius. Instead of proposing a flat tax or a national sales tax—which would force Republicans either to raise taxes for the vast majority of the population or to inflate the deficit—abolishing the tax code allows the party to stoke hatred of taxes without having to defend an unpopular alternative. "It's an absolute political winner," said Senator Tim Hutchinson. And his colleagues

agreed: 153 representatives and 36 senators signed on as sponsors. But then a beautiful thing happened. A private poll by the Republican National Committee found the public thought abolishing the tax code without specifying an alternative would be reckless. The vapid, popular idea, in other words, is actually vapid and unpopular. This is one of those rare and wonderful moments when demagogic politics is defeated on its own terms. Unfortunately, there is also a danger that this episode will teach the Democrats the wrong lesson. In this particular instance, it is both sound policy and sound politics to confront the tax-overhaul movement by defending the status quo. But, in the long run, the current tax code is hard to justify both politically and on substantive grounds. As we have argued before, the best response to regressive tax reform is progressive tax reform. Democrats need to learn this lesson and come up with their own alternative to the current code before it's too late.

UNSCOM WATCH, I: Is TNR's skepticism about the February 23 agreement between Saddam Hussein and the secretary general of the United Nations, Kofi Annan, justified? We hereby commence keeping tabs. On March 17, Iraq's official propagandists reported that U.N. weapons inspectors have visited ten sites unimpeded. Sounds good. But UNSCOM has still not seen any of the presidential palaces, which were the principal bone of contention between the United States and Iraq. And there won't be any such inspections, it seems, until at least March 26. First, UNSCOM Chief Richard Butler has to visit Baghdad to discuss God knows what with Deputy Prime Minister Tariq Aziz, who this week said of Butler, "he deliberately lies, and ... he is an American instrument." In short, a whole month will have elapsed between the time Saddam supposedly agreed to free and unfettered access to the palaces and the day he finally grants it. And, of course, the element of surprise will have been totally lost. As Defense Secretary William Cohen said on March 17, "This crisis is not over." Maybe it has only just begun.

UNBELIEVABLY SILLY ANALOGY WATCH: "Despite enormous differences in the Chinese and U.S. political systems, Mao's conduct may provide some insights into President Bill Clinton's alleged problem.... Both Jiang [Qing, Mao's wife,] and Hillary Clinton knew the pain of seeing power act like an aphrodisiac on their husband.... Hillary Clinton sees a 'vast right-wing conspiracy' threatening her husband. Jiang saw a 'capitalist-road conspiracy' undermining her husband.... Filmed swimming feats were Mao's way of communicating a carefree, masterful image of himself to the people, over the heads of his perceived enemies, a rough equivalent of Clinton looking the nation in the eye on TV and exuding sincerity." —Ross Terrill in the *Los Angeles Times*, March 11. •

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THE HARD QUESTIONS

UNEQUALIZED

By Glenn C. Loury

In February the Council of Economic Advisers issued its *Economic Report of the President*. This annual review of economic trends is read closely by scholars and business analysts for insight about the administration's thinking on such issues as inflation, unemployment, and trade policy. This year's report, however, contained something new—a chapter assessing the extent of income inequality among racial and ethnic groups.

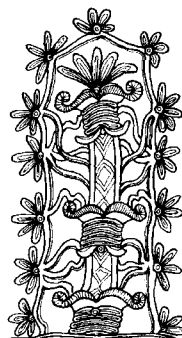
To help inform President Clinton's national conversation on race, the CEA has provided a comprehensive review of racial economic disparity in the United States. For the first time in its 52-year history, the results are enlightening. To grasp the import of what the CEA has done, consider that the extent of black Americans' economic progress is among the most fiercely contested of empirical issues in the social sciences. Unfortunately, press coverage at the time of the report's release did not do justice to this effort's significance—or to its provocative findings.

While the CEA report acknowledges the dramatic rise in black earnings relative to whites from 1965 to 1975—an accomplishment that is testimony to the success of the early anti-discrimination laws civil rights activists worked so hard to secure—it goes on to deliver some troubling news. As a growing chorus of economists has been arguing for the last few years, the convergence toward equality between blacks and whites pretty much came to a halt by 1975, well short of parity. And, in the 23 years since then, the incomes of black families have made no substantial increase vis-à-vis those of white families. (The long economic expansion we now enjoy has produced modest gains in just the last few years. But employment for blacks moves up and down with the business cycle at twice the rate for whites, so these gains could easily evaporate with the next recession.) Moreover, the weight of the evidence suggests that black workers continue to do worse than equally skilled whites.

The clear implication of the CEA report is that, even today, inequality between the races is a problem worthy of national attention. Yet, not unlike the situation of a quarter-century ago, these findings challenge conventional wisdom. Back in 1975, it was liberals and civil rights leaders who denounced research results—

because they feared that acknowledging racial progress might undermine support for future efforts to improve the economic status of blacks. Today, it is conservatives who dominate the debate about race, and they are the ones playing down findings of persistent inequality. The battle against discrimination has been won, they insist. If not for the problematic behavior of the black underclass and misguided demands for affirmative action by a race-obsessed black middle class, they say, there would be no race problem anymore. Stephan and Abigail Thernstrom's much-discussed book, *America in Black and White: One Nation, Indivisible*, is the most prominent example of this kind of thinking: we should be celebrating progress, not bemoaning the lack thereof.

There is just one problem with this argument, as this year's *Economic Report of the President* makes clear. It's wrong. The poverty rate of blacks, at just under a third, is still more than three times that of whites. In 1997, the median black family had one-tenth as much wealth at its disposal and just three-fifths as much income as the median white family. This family-income ratio was actually a bit lower in 1997 than it had been in 1967. Contrary to what conservatives claim, the CEA report shows, the growth in the number of single-parent black families explains only one-fifth of the racial gap in family incomes and poverty rates.



Moreover, in good times and bad, unemployment is twice as high among blacks as among whites, and the inadequate skills of black workers cannot account for all of this disparity. Black male college graduates earned 26 percent less than their white counterparts in 1997. Among men with only a high school diploma, the typical black wage-earner made just 75 cents for each dollar earned by a white counterpart. It is true that differences between black and white women are smaller. But

racial comparisons of women's earnings do not provide a clear picture of the role race plays in the labor market because black and white women who enter the workforce may not be comparable samples from their respective groups. (For example, as an historical matter, black women's attachment to the labor force has been stronger than that of white women.)

Conservatives are quick to point out that these disparities between equally well-educated black and white men overstate the degree of discrimination since not all persons who have attended school for the same number of years are equally productive. It is certainly true that, on average, blacks perform more poorly on reading and math tests than do whites with the same amount of education. But, even when researchers control for scores on standardized tests, black men fare worse in the labor market than comparable whites. A comprehensive study along these lines by the economists Derek Neal and William Johnson, published in the October 1996 issue of the *Journal of Political Economy*, found that young black men during the

early 1990s were earning 7.5 percent less than whites with the comparable test scores.

The question, of course, is not whether racial discrimination still exists. It does, but it is no longer the primary explanation for racial disparities. The problem is the persistent economic inequality among races, which is a complex problem rooted in myriad social and economic factors. One thing is clear, though. While affirmative action itself—and certainly affirmative action by itself—is not the solution to this problem, neither is denying that a problem even exists in the first place. •

Does homeschooling make the grade?

SCHOOL'S OUT

By Katherine Pfleger

Carole Kennedy is a principal at one of the local schools in Columbia, Missouri. But one of the students she says worries her the most isn't even enrolled there. "This boy was in our school in the fourth and fifth grade and had behavior problems. His parents never had an interest in his education. They'd miss parent-teacher conferences. They'd drop him off at concerts and then not pick him up. When he got to middle school, he had attendance problems. His parents got tired of the calls from the attendance office and announced that they were going to pull him out of school and teach him at home." Homeschooling laws vary widely from state to state—some require that parents follow an approved curriculum or bring in their children for annual testing. But, in Missouri, all the boy's parents have to do is file some paperwork. "Now," says Kennedy, "his former friends say he's doing nothing all day."

Stories like this may not be as rare as we'd like to imagine. Once a relatively limited phenomenon, homeschooling is on the rise. Between 1990 and 1995 the number of children taught at home more than doubled—today it stands at over one million. And, as the popularity of homeschooling continues to increase, so does the likelihood that well-meaning parents who lack the know-how, time, or resources to be effective teachers—or, worse, parents who actually have malign motives for keeping their kids out of school—will deprive their children of needed social skills and a decent education.

Homeschooling used to be the province of the religious right. During the 1980s, Christian conservatives seized on it as a way to insulate their children from what they perceived to be the anti-family culture of public schools. These parents, generally full-time mothers,

relied on religious groups to provide them with a curriculum and contacts with other homeschooling families. But, over the past few years, homeschooling has spread well beyond the Christian right; a multitude of Muslim, Jewish, African American, secular, and other homeschooling organizations are popping up across the country. And homeschooling has become an increasingly respected option. Between 1985 and 1997, the percentage of Americans who said they approved of it increased from 16 to 36 percent. Homeschooling, in short, has gone mainstream.

What accounts for the trend? In some cases parents see homeschooling as a remedy for the overcrowded classrooms, cookie-cutter curricula, and indifferent teachers that plague so many public school systems. In other cases parents don't trust the public schools to educate their little geniuses, or perhaps they have a child who has been diagnosed with a learning disability and want to customize his education to meet his needs. Private schooling used to be the solution to many of these problems. But, at just a couple of hundred dollars a year for texts and learning materials, homeschooling is a better bargain.

And, to be sure, homeschooling is not necessarily a prescription for domestic disaster. In fact, there are some stunning success stories. Take Andy of Washington, D.C., who is marching through the fourth-grade curriculum of the Calvert School in Baltimore—one of several reputable correspondence schools that offers graders, transcripts, and diplomas to homeschoolers. Andy is a sweet and highly social kid. He participates in a chess club, arts-and-crafts classes, and group field trips. He has studied the stock market and Latin. He is fascinated by idioms. All this, at seven years old.

But, while homeschooling enthusiasts insist that children taught at home score higher on tests and get into better colleges, a closer look at the research suggests there is little evidence either way. What few studies have been done may be flawed. The most commonly cited study, sponsored by the National Home Education Research Institute, is a case in point. According to that report, the average public school student scores in the 50th percentile on national tests, while the average homeschooler scores in the 80th to 87th percentile—regardless of race. That sounds like an open-and-shut case for homeschooling. But Glen Cutlip, an official of the National Education Association, points out that the study averages percentiles from several different tests, comparing the scores of homeschoolers nationwide with those of public school students from only the state of Virginia. In addition, he says, since the homeschoolers were selected by sending out a questionnaire, they constitute a self-selected group, not a representative sample of the entire homeschooling population.

And there's the rub. In order to assess homeschooling's effectiveness, researchers need full access to homeschooled children. Unfortunately, many homeschooling parents—particularly those in the religious right, who are also the most organized group within the movement—are vehemently opposed to any outside

interference. They even have a lobby, part of the 50,000-member Home School Legal Defense Association, dedicated to blocking the logical next step that would follow further studies: the creation of national standards that would ensure all homeschooled kids are getting at least a rudimentary education.

Not that the homeschoolers need to worry about a serious challenge to their autonomy. The Department of Education has traditionally left the administration of compulsory education to local government, and it shows no inclination to get involved now. As for the press, it has been too busy touting homeschooling miracles to look at the movement critically. But, instead of glowing descriptions of seven-year-old prodigies, the public needs to hear about the overextended mothers, like the one I interviewed, while she juggled a telephone, a toddler screaming for a piece of string cheese, and a second-grader she was supposed to be homeschooling. And the public needs to hear about the public school teachers, like several in the Missouri school, who, Carole Kennedy says, are struggling to reeducate a student who fell several grades behind during the two years his mother taught him at home. This child's remedial education will cost the taxpayers money. That, if nothing else, should get the public's attention. •

ON THE HILL

BROKEN RULES

By David Grann

They were only a few words, tucked into a rules package in the first heady hours of the Republican revolution: "No person may serve as Speaker for more than four consecutive Congresses, beginning with the One Hundred Fourth," and, "No Member may serve as the chairman of the same standing committee ... for more than three consecutive Congresses." At the time, their inclusion seemed like a benign gesture of populism—a small idea lost in the din of bigger ones like ending welfare and balancing the budget.

Yet, three years later, those words have turned the House of Representatives into exactly what the populists were hoping to destroy—a place of constant intrigue and betrayal, where little major legislation is passed. These two obscure passages may explain such mysterious recent events as the abrupt retirement of Representative Bill Paxon, in the midst of a campaign for majority leader, and the decision of Bob Livingston, who was about to lose his powerful Appropriations

Committee chairmanship and retire, to suddenly run for speaker. And, most significantly, they may explain why Newt Gingrich, a man with approval ratings almost as low as Ken Starr's, might run for the presidency in 2000. "The rule changes have created total chaos," says GOP Congressman Joe Scarborough of Florida. Resources Chairman Don Young of Alaska calls them "the dumbest thing we've done." Indeed, rather than contain members' ambitions as term-limit advocates had hoped, the caps have unleashed them. "They're all killing each other," says Democratic Representative Jim McDermott of Washington. "It's a joy to watch."

With 13 committee chairmanships and dozens of subcommittee spots up for grabs in 2000, the politics of seniority have given way to the politics of savagery. Junior Republicans, once content to toil on the Merchant Marine subcommittee, are rushing to fill the vacuum, while senior members, faced with losing their committees, are contemplating either retiring or appropriating even bigger fiefdoms. "It has made Republicans, byzantine in the best of times, stab each other in the backs at every turn," says University of Virginia government professor Larry Sabato.

Last week, only days after being "eighty percent" sure he would retire, Livingston met secretly with 30 Republicans on the first floor of the Capitol to sketch out a plan for succeeding Gingrich—even though the race may not happen for another four years. His turnabout came just days before another would-be successor to Gingrich, Paxon, decided to drop out of politics altogether. Livingston "suddenly saw there was life after being appropriations chair after all," said one supporter.

The next morning Livingston's followers fanned out, canvassing for votes; one, Sonny Callahan of Alabama, wore a button on the floor touting "Bob for Speaker." This sent tremors through the Republican leadership, where Majority Leader Dick Armey of Texas had been clandestinely seeking votes for himself. In the midst of the legislative session, the burly Texan called an emergency meeting of his own kitchen cabinet. Rumors, and counter-rumors, ensued. Counselors of innuendo charged that Livingston, exploiting the powers of the appropriations purse, was offering pork in exchange for votes. "Members of the delegations have confirmed the rumors," said Michele Davis, Armey's communications director, accelerating the rumors.

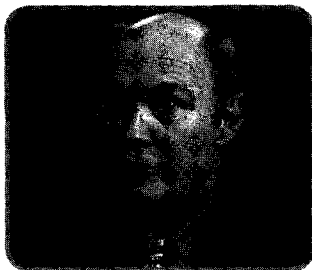
The rest of the Republican-controlled House, meanwhile, succumbed to the very dynamic it once pledged so earnestly to eliminate, a culture of backroom deals and secret bargains. Some members said they were promising their votes in return for coveted chairmanships or leadership posts. Others admitted they were simply promising their votes to anyone who asked. "I think a lot of people are talking out of both sides of their mouth," said Indiana Republican Mark Souder, noting that the vote was



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not only two years away but by secret ballot.

Fueling the frenzy was a small band of self-term-limited mercenaries who wandered the floor looking for someone—anyone, it seems—to topple. After attempting a coup against Gingrich last summer, then throwing their lot behind Paxon, many were seeking a new insurgent. “The best thing about it is you get to really piss off some very powerful Republican every six months,” says Matt Salmon of Arizona, who has promised his district he would serve no more than three terms.

With the do-nothing Congress finally up to something, Gingrich released a letter, just two days before the Ides of March, trying to quell the unrest. “It is my intention,” he insisted, “to run again for Speaker and serve until January 2003.” His critics noted that, unlike the other chairmen, he had left himself a reason to stay: when writing the new House rules in 1995, he had cleverly extended his tenure two years beyond that of his colleagues, thus allowing him to play kingmaker one more time and appoint all the new chairmen. This is one reason, some say, that Paxon, banished from the House leadership after the failed coup, determined there was no place to go but home.

Yet, even as Gingrich publicly vowed to remain in the House, his advisers conceded privately they were plotting his political afterlife as a presidential candidate—trimming his waist, monitoring his temper, and dispatching him to Iowa. The seemingly futile crusade, one adviser explained, is the least bad option: “How do you go from being speaker to sitting on the postal subcommittee?” Onward and upward!

Other members are making similarly extreme calculations: Budget Committee Chairman John Kasich, who for the last four years has helped set the overall amounts of federal spending, is contemplating his own run for the White House as an alternative to obscurity; Bill Archer, the chairman of the Ways and Means Committee which calibrates the tax code for the entire country, has already decided to retire at the end of his tenure; and Republicans fear that Henry Hyde, the estimable chairman of judiciary, and Thomas Bliley, the powerful head of commerce, among others, will call it quits in 2000.

With Republicans clinging to a bare eleven-vote majority, such an exodus may mean more than just a brain drain. “The giant sucking sound in 2000 may be Republicans going down the tubes,” says Ken Johnson, a spokesman for GOP Representative Billy Tauzin of Louisiana. And that’s not even considering the dozen or so Republicans facing self-imposed term limits, many of whom will leave vulnerable seats. “Republicans,” says Sabato, “have handed to Democrats the dagger with which to stab them.”

But, even now, there is a movement to undo the damage, to return the House to the days of patronage and seniority. Chairman Young says he is talking to members about scrapping the rules altogether. Indeed, the final victim of the chaos may be the 37 words that started it all in the first place. •

A new plan to rescue Social Security.

SAVINGS GRACE

By Martin Feldstein

President Clinton was right when he called on Congress to use projected budget surpluses to save Social Security and protect future retirement incomes. Congressional leaders in both parties are now responding with proposals to turn that idea into reality. Among them are Daniel Patrick Moynihan, the ranking Democrat on the Senate Finance Committee, and the committee’s Republican chairman, Bill Roth. Republicans Phil Gramm of Texas and Judd Gregg of New Hampshire, and Democrat Bob Kerrey of Nebraska, also have plans, as do Bill Archer, chairman of the House Ways and Means Committee, and John Kasich, chairman of the House Budget Committee.

What these proposals have in common is that they use federal budget surpluses—which the White House and Congress say will continue through the second decade of the next century—to finance a new kind of universal individual account similar to existing IRA and 401(k) accounts. These individual accounts would supplement traditional pay-as-you-go Social Security and would do so without raising taxes, incurring a budget deficit, or making individuals tighten their belts. Other countries have already done it. Sweden recently enacted a plan to put 2.5 percent of each worker’s wages into an individual account. Australia developed a system in the 1980s. England has been developing one for more than a decade.

Here’s how it might work in the United States. Each year, you could put two percent of your annual earnings (up to the Social Security maximum earnings limit, now \$68,400) into a Personal Retirement Account and get a dollar-for-dollar tax credit for the amount you deposited. For those who pay little or no income tax, the PRA tax credit would be converted into a cash rebate.

The PRA deposit would thus cost those who participate nothing. In effect, you would get a tax cut of two percent of earnings (up to the \$68,400 limit) on the condition that the tax cut is deposited in the PRA. Since the amount of earnings eligible for the two percent credit is equal to about 40 percent of gross domestic product, the PRA deposits would end up costing the government about 0.8 percent of GDP per year, less than the projected annual budget surpluses. To be sure, when the projected budget surpluses end around 2015, the 0.8 percent of GDP would have to be generated through new tax revenue or reduced spending. But this is not an impossible task in an economy in which federal taxes and spending account for more than 20 percent of GDP.

The government could regulate PRAs as it does existing IRA accounts to prevent them from being risked on such speculative investments as puts and calls or collectibles. It might even impose more stringent regulations requiring, for example, that the funds be invested in diversified mutual funds or bank deposits. At retirement age, you could use your accumulated balance to buy an annuity, or you might be allowed to withdraw them gradually subject to age-related restrictions.

If you work for a large employer, your firm might assist by using payroll deductions to direct the two percent of earnings into PRA accounts. You would still be free to opt out of the employer's PRA plan and put your two percent into any alternative approved investment. Or you could use your annual tax return to designate a bank, mutual fund, or insurance company to which the government would then send two percent of the past year's earnings. For those who make no other choice, the funds would go to a government-sponsored account like the Federal Employees Thrift Plan. With these three options, every wage-earner would participate, and administrative costs would be low.

In such a system, PRAs would accumulate substantial retirement benefits. Even before the sharp market rise of the past three years, a conservative portfolio with 60 percent in a diversified stock fund and 40 percent in bonds earned a long-term average return of 5.5 percent after inflation. That means that somebody who earned \$30,000 a year (at 1998 prices) and put two percent of his earnings from age 25 to age 65 into a PRA would accumulate more than \$80,000 by age 65, more than double his annual preretirement income. The retiree could use that \$80,000 to fund a \$6,500 annuity from ages 65 to 85, more than 20 percent of the \$30,000 preretirement income. Such a PRA-financed annuity would also be a substantial add-on to ordinary Social Security benefits. Under the current system, somebody with constant real earnings of \$30,000 a year would receive benefits of about \$13,000 a year. With a PRA annuity that person would have 50 percent more retirement income.

But there is an even better way to use the PRA dollars to protect Social Security and reduce future payroll tax increases. Individual PRA withdrawals could be integrated explicitly with Social Security benefits in a way that would improve the financial viability of the existing Social Security system—and hence obviate much or all of the future increases in the payroll tax that Social Security actuaries now consider necessary to finance the future retirement benefits promised in current law.

For example, a 50 percent integration of PRA withdrawals with Social Security benefits would mean that each dollar of retirement income that you withdraw from a PRA would reduce your Social Security benefit that year by 50 cents. If you take \$6,000 from a PRA, you would forgo \$3,000 in Social Security benefits. With such an integration, individuals with above-average investment experience would give up more Social Security benefits, while those with below-average investment experience

would get more from Social Security. But, for everyone, the combination of Social Security benefits and the PRA withdrawals would exceed Social Security benefits alone.

The reduced payout of benefits that would result from such a system would also contribute substantially to the financial health of the Social Security system. The trust fund would no longer be exhausted in 2029 as Social Security actuaries now project. Benefits specified in current law could be paid, while keeping the payroll tax rate below 15 percent, instead of raising it to 18 percent as is currently projected.

Raising the integration factor to 75 percent—in other words, decreasing your Social Security benefits by 75 cents for every dollar you take from the PRA account—would completely eliminate the Social Security funding shortfall. More specifically, with a 75 percent integration, the tax rate required to finance the benefits specified in current law would never have to be raised above the existing 12.4 percent. The combination of net Social Security benefits and the PRA withdrawals would eventually be about ten percent higher than the Social Security benefits projected in current law.

In addition to protecting Social Security benefits, by increasing retirement income and substantially lowering payroll taxes, the system of individual accounts would increase the national savings rate above what it would otherwise be. This is true for two reasons. Because most Americans have few financial assets, they would be unable to offset their PRA savings by increasing their consumption elsewhere. Also, it's a safe bet that the government surpluses that would be used to fund the PRAs would not otherwise be used to pay down the national debt. Politics being what it is, that money would go to current consumption in the form of tax cuts or spending.

Some have advocated transferring the surpluses into the existing Social Security trust fund and allowing the government to invest those funds in private stocks and bonds. But individual accounts are preferable for three reasons. First, a plan to transfer budget surpluses to the trust fund could easily degenerate into giving the trust fund whatever happens to be left of the surplus after new government spending and new tax cuts—and that is likely to be less than the two percent of payroll mandated under the PRA plan. Second, even if the actual surpluses are invested in private securities in the trust fund, nothing is really achieved if the government then turns around and increases other spending or cuts taxes. Either way, the country would forfeit the increase in national savings it would achieve with PRAs.

A third problem with investing the budget surpluses in private securities is that it would radically change the government's role in the economy. Nearly \$1 trillion of projected surpluses would be invested by the government in private stocks and bonds. Over time, these investments would grow larger as share prices rise and dividends and interest are reinvested. There would inevitably be strong political pressures to influence how those funds are invested; for example, Congress might try to steer funds to companies in favored parts of the country, just as defense contracts are now parceled out to each member's

congressional district. The result would be a reduced return on the investment funds and an unwelcome interference by the government in the private sector.

Committing the projected budget surpluses to PRAs would raise the real incomes of all employees and eventually all retirees. Integrating the PRA withdrawals and Social Security benefits could maintain Social Security's solvency without reducing projected benefits or increasing the payroll tax. Limiting the future payroll tax to the current 12.4 percent, instead of increasing it to the 18 percent as required by the current system, would be an enormous benefit to working Americans. I can think of no other policy that would do more to raise permanently the real income of low- and middle-income families.

President Clinton's call to use the projected budget surpluses to save Social Security could be the first step toward securing his economic legacy. Now he needs to join with congressional leaders in both parties to find the form of PRA that can turn his initiative into a reality.

MARTIN FELDSTEIN, a former chairman of the president's Council of Economic Advisers, is a professor of economics at Harvard.

RWANDA DISPATCH

LIFE AFTER DEATH

By Samantha Power

From a distance the Gitarama prison's outer walls appear to shimmer. It's an optical illusion created by hundreds of thin, sweaty arms poking in and out of narrow slits in the prison's facade. The Gitarama inmates are pleading for water from a guard dozing in the nearby shade, but he ignores them. During the spring of 1995, nine Rwandans per day died in this jail. Conditions have improved, but dehydration, disease, and suffocation remain common. Across the country, about 120,000 genocide suspects are locked up in similar conditions. Some have been imprisoned without cause, many without formal charges, and nearly all without hope of trial, let alone release, any time in the next decade. And the arrests continue, thanks in part to local thugs who, in their eagerness to get their hands on the land and cows of their neighbors, will pay \$33 plus a cut of the loot to anyone willing to denounce one of his countrymen as a *genocidaire*.

The Rwandan government is attempting to apply a legal solution to a most monstrous crime—the Hutu-militants' cold-blooded massacre of 800,000 Tutsi and moderate Hutu during a 100-day frenzy in 1994. But so

far the Tutsi-dominated government's one-year-old judicial experiment is satisfying no one.

There are so many cases to be tried that, at the current pace, 97 percent of Gitarama's inmates will probably die of old age before they ever see a courtroom. And of those "lucky" enough to face a judge, only half will have lawyers, usually Belgian or West African counsel supplied by *Avocats sans Frontières*, or Lawyers without Borders—an organization initially scorned by survivors as "*Genocidaires sans Frontières*." The accused get no more than three days to examine their case files, and witnesses rarely testify for fear of instant denunciation or retaliation. In the nearly 350 trials conducted to date, a little over one-third of the suspects have been sentenced to death. None of these sentences has been carried out yet. But survivors of the genocide are getting restive, and the executions are expected to commence in the coming months.

Philbert Sindayiga is one of those calling for an eye for an eye. A 25-year-old Tutsi farmer, Sindayiga lost his father, four sisters, and three brothers in the onslaught of 1994. I met him in a church in the town of Nyamata, where he now spends his days in the morbid company of the skulls and bones of his murdered relatives. His family's remains are on display there amid those of some 25,000 Rwandans who had vainly sought shelter in the church and surrounding hills. Sindayiga beckons me to a corner where he and a friend pull the blanket off a musty bundle to reveal the lime-green corpse of a murdered Tutsi woman whom they have managed to preserve with a local chemical brew. "The killers must be punished, or else we will be forced to take justice into our own hands," he explains, covering the grisly monument. "And, if we do that, there'll be no difference between us and them."

Indeed, after the current Tutsi-led government defeated the Hutu regime in August 1994, it made a concerted effort to distinguish itself from its genocidal predecessor. It was an almost unprecedented instance of victims snatching power from their victimizers, and the early gestures were impressive. The new government placed members of the majority Hutu (who make up 85 percent of the population) in the senior ranks of its ministries, urged Hutu refugees to return home, and preached tolerance, coexistence, and respect for human rights. As one prominent member of parliament put it, "We did not come here only to take power. We came here to change things in this country."

Given that as many as 100,000 Hutu had just taken part in a killing spree that wiped out nearly half of Rwanda's Tutsi populace, international observers found the new government's stance admirable. But four years later, as the regime struggles to quell a Hutu rebellion that aims to finish the job of 1994, the international community is bitterly divided over whether the Rwandan government has abandoned its stated ideals. On one side of this vitriolic debate are human rights groups that insist the gap between the old regime and the new is narrowing. They note that, though far from genocidal, the current government has locked up tens of thousands of Hutu without explanation, harassed its political opponents, and expressed little public remorse about mas-

sacrificing civilians while ferreting out Hutu rebels. When Hutu insurgents strike Tutsi soldiers or civilians, the Hutu-led army usually responds in kind and often in excess—unintentionally earning the Hutu militants new recruits in the process. The army has warned that anyone who shelters or even sympathizes with Hutu rebels may be arrested or attacked. In 1997, according to U.N. monitors, government forces murdered at least 8,000 Hutu. And, over the past three weeks, soldiers have been engaged in a violent “mop up” operation, killing several hundred Hutu in retaliation for a recent Hutu assault that left 19 Tutsi dead. Thus, it’s not altogether surprising that nearly half of the Hutu genocide suspects who have escaped from prison in the last several months have turned themselves back in, reasoning that they are safer inside the overcrowded jails than outside.

But, while human rights watchdogs cry foul, American and European governments take the opposite stance—keeping largely mum over these abuses, emphasizing the unparalleled obstacles the Tutsi regime must overcome, and pumping in aid to help them do so. When President Clinton touches down in Rwanda during his trip to Africa this coming week, for instance, he is expected to announce an increase in American assistance.

The major powers choose to continue their support for the current regime partly because they are guilt-ridden over having failed to halt the 1994 genocide. (France has even launched a parliamentary investigation into its role in arming the Hutu attackers.) But they also believe that this underresourced and overwhelmed government deserves the benefit of the doubt. They feel, with good reason, that it would be incorrect and immoral to analyze the state policy in isolation. After all, the Hutu militants managed to murder more people more quickly than any other regime in the modern era. Furthermore, while today’s prison conditions and judicial deviances are deplorable, this is largely due to the decimated state of Rwanda’s legal system. Even before the genocide, fewer than half of Rwanda’s judges and magistrates had received any formal legal training. During the slaughter, most judges, prosecutors, and criminal investigators either became killers or cadavers. By the fall of 1994, only 244 judges, 14 prosecutors, and 39 investigators remained to tackle close to a million homicides.

Meanwhile, far from ceasing their murderous mischief, Hutu *genocidaires* are still on the loose. Initially, when the Hutu regime was first defeated, some two million Hutu (an unwieldy mix of militant masterminds, blood-stained foot soldiers, and terrified bystanders) fled to neighboring countries. But, over the course of 1996, the refugee camps were closed (many forcibly), and more than one-and-a-half million Hutu refugees opted to take their chances and go back to Rwanda. Upon their return, many were registered and then either arrested on genocide charges or whisked off to “solidarity camps” so they could be “reoriented” (some say brainwashed) to sympathize with their new governors. The ringleaders of the genocide knew enough to stay away, but 23 of them—

including the former Hutu prime minister and defense minister—were later nabbed in Africa and Europe and extradited to the International War Crimes Tribunal in neighboring Tanzania, where they will be tried. They will receive a maximum of life imprisonment (probably somewhere in Scandinavia), while the most serious “Category One” culprits processed in the Rwandan system (in most cases somewhat smaller fry) will get death.

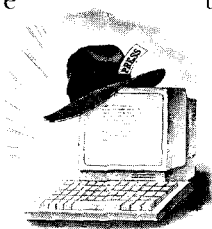
But many killers have slipped through the cracks. This past December and January were the bloodiest months since 1994, as an increasingly sophisticated network of Hutu rebel bands orchestrated jailbreaks that freed more than 1,000 Hutu prisoners as well as massacres that targeted the most vulnerable Tutsi civilians—women and children living in refugee camps.

International donors and leading states decided early on to throw their weight and money behind the legal remedy, spending \$18 million on judicial infrastructure and training in a country where half of the population lives on less than a dollar per day. But the money can only achieve so much. Fifteen miles down the road from the Gitarama prison, for example, the European Union is funding a five-month training camp for police investigators. When I visited, 150 sprightly trainees were just filing into their plush new home, which is decked with palm

trees, flower beds, cobbled pathways, and a full-size football field. These newcomers had no experience, but they just passed a 14-question entrance exam, and, upon earning their badges, whistles, and motorbikes, they will be dispatched to investigate the crimes of 1994 in the hopes of expediting the trial process.

They are, in essence, genocide cops. And, since only a few dozen investigators remained in Rwanda after the genocide, the Belgian who administered the test couldn’t afford to be too discriminating. Most of those accepted in the program identified cannabis—not as (a) a variety of sugar cane, (b) a drug extracted from hemp, or (c) a soft drink—but as (d) a predatory bird. The well-meaning training camp may be creating Rwanda’s law enforcers of the future, but there is simply no way that the planned 500-investigator force will be able to process the monumental sins of the past.

And, as daunting as the logistical hurdles to national reconciliation may be, they are nothing compared to the psychological ones. Generally speaking, since the Hutu responsible for the genocide believe they did their people a service (exterminating the *inyenzi*, or “cockroaches,” as they call the Tutsi), they are not sorry. Euphrasie Kamatamu is an alleged Category One killer. Accused of plotting massacres, selling forged Hutu identity cards to Tutsi women and girls, and then steering machete-wielders their way, she has been placed in the elite class of “instigators,” “sexual torturers,” or “notorious murderers,” who “distinguished themselves” by exhibiting excessive zeal or malice in carrying out the crimes. If convicted, she will automatically be sentenced to death. Yet the plump, shaved-headed Kamatamu, who is being tried jointly along with her husband and two military escorts, appears undaunted. She saunters into



the Kigali courtroom, caresses the crucifix around her neck, and smiles at her hostile neighbors who line the aisles. Like virtually all genocide suspects in custody—including the 23 being held by the United Nations in Tanzania—she steps up to the bench and pleads “not guilty.”

Plagued as it is by remorseless killers, keystone cops, and bursting prisons, the legal remedy looks most unpromising. Which is what one might expect four years after a genocide of such scale. Unfortunately, and perhaps unjustly, Rwanda’s long-term future depends less on the international community (which will go on giving) or

the Hutu *genocidaires* (who will go on killing) but on the discipline, and even idealism, of the Tutsi-led government. Neither Rwanda’s borders nor its citizens will ever be secure until the state can enshrine the rule of law, respect the rights of all, and someday create a pluralistic political landscape. But, to get there, the Tutsi regime will have to recommit itself to doing more than merely distinguishing itself from an utterly ignoble predecessor.

SAMANTHA POWER, an adviser to the International Crisis Group, is writing a book on American responses to genocide.

Affirmative action is bad. Banning it is worse.

IN DEFENSE OF PREFERENCE

By Nathan Glazer

The battle over affirmative action today is a contest between a clear principle on the one hand and a clear reality on the other. The principle is that ability, qualifications, and merit, independent of race, national origin, or sex should prevail when one applies for a job or promotion, or for entry into selective institutions for higher education, or when one bids for contracts. The reality is that strict adherence to this principle would result in few African Americans getting jobs, admissions, and contracts. What makes the debate so confused is that the facts that make a compelling case for affirmative action are often obscured by the defenders of affirmative action themselves. They have resisted acknowledging how serious the gaps are between African Americans and others, how deep the preferences reach, how systematic they have become. Considerably more than a mild bent in the direction of diversity now exists, but it exists because painful facts make it necessary if blacks are to participate in more than token numbers in some key institutions of our society. The opponents of affirmative action can also be faulted: they have not fully confronted the consequences that must follow from the implementation of the principle that measured ability, qualification, merit, applied without regard to color, should be our only guide.

I argued for that principle in a 1975 book titled, provocatively, *Affirmative Discrimination*. It seemed obvious that that was what all of us, black and white, were aiming to achieve through the revolutionary civil rights legislation of the 1960s. That book dealt with affirmative action in employment, and with two other kinds of gov-

ernmentally or judicially imposed “affirmative action,” the equalization of the racial proportions in public schools and the integration of residential neighborhoods. I continued to argue and write regularly against governmentally required affirmative action, that is, racial preference, for the next two decades or more: it was against the spirit of the Constitution, the clear language of the civil rights acts, and the interests of all of us in the United States in achieving an integrated and just society.

It is not the unpopularity of this position in the world in which I live, liberal academia, that has led me to change my mind but, rather, developments that were unforeseen and unexpected in the wake of the successful civil rights movement. What was unforeseen and unexpected was that the gap between the educational performance of blacks and whites would persist and, in some respects, deepen despite the civil rights revolution and hugely expanded social and educational programs, that inner-city schools would continue to decline, and that the black family would unravel to a remarkable degree, contributing to social conditions for large numbers of black children far worse than those in the 1960s. In the presence of those conditions, an insistence on color-blindness means the effective exclusion today of African Americans from positions of influence, wealth, and power. It is not a prospect that any of us can contemplate with equanimity. We have to rethink affirmative action.

In a sense, it is a surprise that a fierce national debate over affirmative action has not only persisted but intensified during the Clinton years. After twelve years under two Republican presidents, Ronald Reagan and George

Bush, who said they opposed affirmative action but did nothing to scale it back, the programs seemed secure. After all, affirmative action rests primarily on a presidential executive order dating back to the presidencies of Lyndon Johnson and Richard Nixon which requires "affirmative action" in employment practices from federal contractors—who include almost every large employer, university, and hospital. The legal basis for most of affirmative action could thus have been swept away, as so many noted at the time, with a "stroke of the pen" by the president. Yet two presidents who claimed to oppose affirmative action never wielded the pen.

Despite the popular majority that grumbles against affirmative action, there was (and is) no major elite constituency strongly opposed to it: neither business nor organized labor, religious leaders nor university presidents, local officials nor serious presidential candidates are to be found in opposition. Big business used to fear that affirmative action would undermine the principle of employment and promotion on the basis of qualifications. It has since become a supporter. Along with mayors and other local officials (and of course the civil rights movement), it played a key role in stopping the Reagan administration from moving against affirmative action. Most city administrations have also made their peace with affirmative action.

Two developments outside the arena of presidential politics galvanized both opponents and defenders of affirmative action. The Supreme Court changed glacially after successive Republican appointments—each of which, however, had been vetted by a Democratic Senate—and a number of circuit courts began to chip away at the edifice of affirmative action. But playing the largest role was the politically unsophisticated effort of two California professors to place on the California ballot a proposition that would insert in the California Constitution the simple and clear words, taken from the Civil Rights Act of 1964, which ban discrimination on the basis of race, national origin, or sex. The decision to launch a state constitutional proposition, Proposition 209, suddenly gave opponents the political instrument they needed to tap the majority sentiment that has always existed against preferences.

While supporters of affirmative action do not have public opinion on their side, they do have the still-powerful civil rights movement, the major elites in education, religion, philanthropy, government, and the mass media. And their position is bolstered by a key fact: how far behind African Americans are when judged by the tests and measures that have become the common coin of American meritocracy.

The reality of this enormous gap is clearest where the tests in use are the most objective, the most reliable, and the best validated, as in the case of the various tests used for admission to selective institutions of higher education, for entry into elite occupations such as law and medicine, or for civil service jobs. These tests have been developed over many years specifically for the purpose

of eliminating biases in admissions and appointments. As defenders of affirmative action often point out, paper-and-pencil tests of information, reading comprehension, vocabulary, reasoning, and the like are not perfect indicators of individual ability. But they are the best measures we have for success in college and professional schools, which, after all, require just the skills the tests measure. And the tests can clearly differentiate the literate teacher from the illiterate one or the policeman who can make out a coherent arrest report from one who cannot.

To concentrate on the most hotly contested area of affirmative action—admission to selective institutions of higher education—and on the group in the center of the storm—African Americans: If the Scholastic Assessment Test were used for selection in a color-blind fashion, African Americans, who today make up about six percent of the student bodies in selective colleges and universities, would drop to less than two percent, according to a 1994 study by the editor of the *Journal of Blacks in Higher Education*.

Why is this so? According to studies summarized in Stephan and Abigail Thernstrom's book, *America in Black and White*, the average combined SAT score for entering freshmen in the nation's top 25 institutions is about 1300. White applicants generally need to score a minimum of 600 on the verbal portion of the test—a score obtained by eight percent of the test-takers in 1995—and at least 650 on the mathematics section—a score obtained by seven percent of the test-takers in 1995. In contrast, only 1.7 percent of black students scored over 600 on the verbal section in 1995, and only two percent scored over 650 on the math. This represents considerable progress over the last 15 years, but black students still lag distressingly far behind their white counterparts.

There is no way of getting around this reality. Perhaps the tests are irrelevant to success in college? That cannot be sustained. They have been improved and revised over decades and predict achievement in college better than any alternative. Some of the revisions have been carried out in a near-desperate effort to exclude items which would discriminate against blacks. Some institutions have decided they will not use the tests, not because they are invalid per se, but because they pose a barrier to the increased admission of black students. Nor would emphasizing other admissions criteria, such as high school grades, make a radical difference. In any case, there is considerable value to a uniform national standard, given the enormous differences among high schools.

Do qualifications at the time of admission matter? Isn't the important thing what the institutions manage to do with those they admit? If they graduate, are they not qualified? Yes, but many do not graduate. Two or three times as many African American students as white students drop out before graduation. And the tests for admission to graduate schools show the same radical disparities between blacks and others. Are there not also prefer-

ences for athletes, children of alumni, students gifted in some particular respect? Yes, but except for athletes, the disparities in academic aptitude that result from such preferences are not nearly as substantial as those which must be elided in order to reach target figures for black students. Can we not substitute for the tests other factors—such as the poverty and other hardships students have overcome to reach the point of applying to college? This might keep up the number of African Americans, but not by much, if the studies are to be believed. A good number of white and Asian applicants would also benefit from such “class-based” affirmative action.

(I have focused on the effect of affirmative action—and its possible abolition—on African Americans. But, of course, there are other beneficiaries. Through bureaucratic mindlessness, Asian Americans and Hispanics were also given affirmative action. But Asian Americans scarcely need it. Major groups—not all—of Hispanic Americans trail behind whites but mostly for reasons we understand: problems with the English language and the effect on immigrant children of the poor educational and economic status of their parents. We expect these to improve in time as they always have with immigrants to the United States. And, when it comes to

Testing Texas

The University of Texas Law School is ground zero of the post-affirmative action world. In a 1996 case, *Hopwood v. Texas*, the Fifth Circuit Court of Appeals struck down the law school's affirmative action policy. To ensure that each entering class of 500 or so included about 75 black and Hispanic students, the law school had been operating, in effect, a “dual” admissions system under which minority and nonminority students were being admitted by separate criteria—a method that the Supreme Court had struck down in the 1978 *Bakke* case. This fall, at the beginning of the first semester since *Hopwood*, 26 Mexican-American students, and four blacks, enrolled in Texas's first-year class—only a few more than the law school had had during the late '60s. Back then, the lack of minority representation hadn't been a big issue at the law school. Now, it is seen as a political and marketing disaster. Qualified minority students, whom schools fight over like star quarterbacks, are proving reluctant to apply to Texas. And so are the kind of progressively minded, out-of-state white students who help make the law school a national, rather than local, institution. “There have been times at recruitment events when majority and minority students approach the table together and say ‘What does the entering class look like?’” Shelli Soto, the law school's assistant dean of admissions, told me.

Since *Hopwood* the law school has labored mightily to thread the eye of a legal needle—to admit large numbers of minority students without applying explicitly racial or ethnic criteria. The law school's application now includes an optional “Statement on Economic, Social or Personal Disadvantage”—an effort to tease more minority appli-

cants out of the pool. “‘Qualified’ really means a combination of your accomplishments and your experiences,” Soto explains. But this effort to side-step such statistical criteria as LSAT results doesn't really work. Black students do not have more extracurricular activities than whites and do not have better grade-point averages relative to their LSAT scores. And, because so few black students from truly disadvantaged backgrounds do well enough academically to qualify even under affirmative action criteria, “class-based” affirmative action doesn't help either. It seems the only way to admit large numbers of blacks is to admit them *because* they are black.

When I posed this problem to William Cunningham, the chancellor of the U.T. system, he said that the University of Texas Medical School had already adjusted its admissions criteria. “They want to look at people's motivation,” the chancellor said, “the human traits that have to do with their wanting to be doctors.” Was this being done in the hope that it would have a “race-positive effect?” I asked. Cunningham paused for a long, careful moment. “I don't want to say ‘race-positive,’” he said. It wasn't clear what he *could* say without violating *Hopwood*. “We want to have a diverse student body,” he said, “and we want to look at broader criteria than we have in the past to insure that we have a diverse student body.” I told Cunningham that some law school faculty members were concerned about diluting admissions standards. The chancellor said very carefully, “I do think this is a time for us to be thoughtful and flexible.” Was it possible to be “flexible” without either violating the terms of *Hopwood* or lowering standards? “It is,” Cunningham sighed, “a difficult problem.”

U.T.'s administrators are also looking over their shoulders at the Texas state legislature. A quarter of a cen-

tury ago, it was virtually all white; now it has significant, and growing, black and Hispanic representation. As Russell Weintraub, a professor of contracts at the law school who was uneasy about affirmative action, says: “If the majority of people in this state are going to be Mexican-American and African American, and they are going to assume many of the leadership roles in the state, then it's going to be big trouble if the law school doesn't admit many minority students—it's going to be a bomb ready to explode.”

Indeed, a few small bombs have detonated already. Soon after the *Hopwood* decision the state legislature passed a law that would require the University of Texas undergraduate college to accept the top ten percent of graduates from every high school in the state. This law, which would increase minority enrollment by automatically admitting the best students from heavily minority high schools, effectively reinstated a rule the college had abandoned three years ago in order to strengthen its standards.

The legislature then passed another law that requires public universities to apply the minimum grade-point average demanded of entering students to everyone—including athletes admitted on scholarship. The law, whose interpretation is now a matter of debate, would destroy the Texas Longhorn football team. Its sponsor, Ron Wilson, is a black State Assemblyman from Houston who attended both U.T. and U.T. Law. Wilson freely admits that the bill was designed to punish the university, which he saw as complicit in the *Hopwood* ruling. “If you're just a regular African American student with a two-point-five grade-point average, you can't get into the University of Texas,” he told me. “But, if you can play the court jester out there on the football field and earn the university a million dollars, you

women, there is simply no issue today when it comes to qualifying in equal numbers for selective institutions of higher and professional education.)

How, then, should we respond to this undeniable reality? The opponents of affirmative action say, "Let standards prevail whatever the result." So what if black students are reduced to two percent of our selective and elite student bodies? Those who gain entry will know that they are properly qualified for entry, that they have been selected without discrimination, and their classmates will know it too. The result will actually be improved race relations and a continuance of the

improvements we have seen in black performance in recent decades. Fifteen years from now, perhaps three or four percent of students in the top schools will be black. Until then, blacks can go to less competitive institutions of higher education, perhaps gaining greater advantage from their education in so doing. And, meanwhile, let us improve elementary and high school education—as we have been trying to do for the last 15 years or more.

Yet we cannot be quite so cavalier about the impact on public opinion—black and white—of a radical reduction
continued on page 24

can get in. As far as I'm concerned, that's hypocrisy. My bill says you can't have it both ways."

Wilson's real goal, of course, is not to exclude the athletes but to force the university to take everyone else. One solution, Wilson said, was "open admission." I asked if that wouldn't lead to a lowering of standards. Wilson said: "I don't look at academic standards as the Bible for academic excellence. There hasn't been enough input into those standards from African Americans and Hispanics to make them relevant to their community." And he added one more threat: if the university couldn't counteract the effect of *Hopwood*, he said, "We're going to move the money to follow the students to historically black colleges, if necessary."

The revenge of the legislature implies that the costs of doing away with affirmative action may turn out to be higher than the costs of keeping it. One of the most intriguing documents of the post-affirmative action era is an amicus brief which three professors at U.T. Law submitted to the Supreme Court in an affirmative action case last year. The three made the usual case in favor of affirmative action—but added a more novel, purely pragmatic argument: "A large public institution that serves the whole state cannot maintain its legitimacy if it is perceived to exclude minority students." The authors described the two bills that had passed the Texas legislature and noted that the University of California system is considering waiving its SAT requirement. If *Hopwood* becomes law for the country as a whole, the authors declared apocalyptically, "there will eventually be no great public universities—not for the nation and not for the white plaintiffs either."

In other words, affirmative action represents not a threat to academic standards but the surest means of pre-

serving them. This argument sounds so perverse that it's hard to take seriously, but it's not without foundation. Douglas Laycock, one of the authors of the brief, said: "We're in the middle of a full-blown attack on every means we have to measure merit and on the very idea of merit, and it's mostly driven by the issue of race." What Laycock was suggesting is that, in a straightforward battle between the old meritocratic principle on which conservatives make their stand and the new ideals of diversity and inclusion, meritocracy is likely to lose. And, several weeks later, *The New York Times* inadvertently confirmed his point in a front-page story headlined, "COLLEGES LOOK FOR ANSWERS TO RACIAL GAPS IN TESTING." Donald M. Stewart, president of the College Board, lamented the "social cost" of relying on standardized tests on which minority students fare poorly. "America can't stand that," Stewart said.

Should we regret the political and marketplace dynamics that essentially force institutions like the University of Texas Law School to practice affirmative action? The original rationale for affirmative action was that it helped disadvantaged students overcome the effects of discrimination, both current and historical. No one questions that U.T. Law is guilty of past discrimination. The school was off-limits to black students as a matter of state law until a celebrated 1950 Supreme Court decision, *Sweatt v. Painter*. But most of the black students who attend the law school now come from other states, and they are scarcely more likely than the white students to come from a disadvantaged background.

What about "diversity"? The diversity argument has rapidly eclipsed the past-discrimination argument, because it is so much rosier and more consensual. It's hard to dispute the notion that

institutions benefit from "diverse" points of view. But is that a large enough good to justify disadvantaging whites? And there's something arbitrary about the math. Randall Kennedy, a professor at Harvard Law School and another uneasy supporter of affirmative action, says: "I have my problems with the idea that we've got to have diversity because in the year 2000 the census says this and this about a jurisdiction. Does that mean that, if you're in Maine, you don't have to have more than one black student?"

The simple and painful truth is that affirmative action rests on a bedrock of failure. The reason why the University of Texas Law School needed affirmative action in the first place is that, according to a university deposition in *Hopwood*, only 88 black students in the entire country had a combination of grades and law boards in 1992 that reached the mean of admitted white students; only one of those black students came from Texas. One lesson of post-*Hopwood* Texas is that eliminating affirmative action would virtually wipe out the black presence in top schools. For conservatives, that's just the way the meritocratic cookie crumbles, but for most Americans, justly proud of the extent to which our leading institutions have been integrated over the last quarter century, that's likely to be an unacceptable outcome.

Affirmative action is, at bottom, a dodge. It allows us to put off the far harder work: ending the isolation of young black people and closing the academic gap that separates black students—even middle-class black students—from whites. When we commit ourselves to that, we can do without affirmative action, but not before.

JAMES TRAUB

JAMES TRAUB is a staff writer for *The New Yorker*.

“Living away from the farm would not be living.”

VALERIE SHAW

LANCASTER, OHIO

Farm life is the only life Valerie Shaw could ever imagine. But when the animals and hay aggravated her asthma, dangerous lung infections developed.

These infections became so serious, they almost forced her off the family farm.

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tion in the number of black students at the Harvards, the Berkeleys, and the Amhersts. These institutions have become, for better or worse, the gateways to prominence, privilege, wealth, and power in American society. To admit blacks under affirmative action no doubt undermines the American meritocracy, but to exclude blacks from them by abolishing affirmative action would undermine the legitimacy of American democracy.

My argument is rooted in history. African Americans—and the struggle for their full and fair inclusion in U.S. society—have been a part of American history from the beginning. Our Constitution took special—but grossly unfair—account of their status, our greatest war was fought over their status, and our most important constitutional amendments were adopted because of the need to right past wrongs done to them. And, amid the civil rights revolution of the 1960s, affirmative action was instituted to compensate for the damage done to black achievement and life chances by almost 400 years of slavery, followed by state-sanctioned discrimination and massive prejudice.

Yet, today, a vast gulf of difference persists between the educational and occupational status of blacks and whites, a gulf that encompasses statistical measures of wealth, residential segregation, and social relationships with other Americans. Thirty years ago, with the passage of the great civil rights laws, one could have reasonably expected—as I did—that all would be set right by now. But today, even after taking account of substantial progress and change, it is borne upon us how continuous, rooted, and substantial the differences between African Americans and other Americans remain.

The judgment of the elites who support affirmative action—the college presidents and trustees, the religious leaders, the corporate executives—and the judgment even of many of those who oppose it but hesitate to act against it—the Republican leaders in Congress, for example—is that the banning of preference would be bad for the country. I agree. Not that everyone's motives are entirely admirable; many conservative congressmen, for example, are simply afraid of being portrayed as racists even if their opposition to affirmative action is based on a sincere desire to support meritocratic principle. The college presidents who support affirmative action, under the fashionable mantra of diversity, also undoubtedly fear the student demonstrations that would occur if they were to speak out against preferences.

But there are also good-faith motives in this stand, and there is something behind the argument for diversity. What kind of institutions of higher education would we have if blacks suddenly dropped from six or seven percent of enrollment to one or two percent? The presence of blacks, in classes in social studies and the humanities, immediately introduces another tone, another range of questions (often to the discomfort of black students who do not want this representational burden placed upon them). The tone may be one of embarrassment and hesitation and self-censorship

among whites (students and faculty). But must we not all learn how to face these questions together with our fellow citizens? We should not be able to escape from this embarrassment by the reduction of black students to minuscule numbers.

The weakness in the "diversity" defense is that college presidents are not much worried about the diversity that white working-class kids, or students of Italian or Slavic background, have to offer. Still, there is a reputable reason for that apparent discrepancy. It is that the varied ethnic and racial groups in the United States do not, to the same extent as African Americans, pose a test of the fairness of American institutions. These other groups have not been subjected to the same degree of persecution or exclusion. Their status is not, as the social status of African Americans is, the most enduring reproach to the egalitarian ideals of American society. And these other groups have made progress historically, and make progress today, at a rate that incorporates them into American society quickly compared to blacks.

This is the principal flaw in the critique of affirmative action. The critics are defending a vitally important principle, indeed, the one that should be the governing principle of institutions of higher education: academic competence as the sole test for distinguishing among applicants and students. This principle, which was fought for so energetically during the 1940s and 1950s through laws banning discrimination in admission on the basis of race, national origin, or religion, should not be put aside lightly. But, at present, it would mean the near exclusion from our best educational institutions of a group that makes up twelve percent of the population. In time, I am convinced, this preference will not be needed. Our laws and customs and our primary and secondary educational systems will fully incorporate black Americans into American society, as other disadvantaged groups have been incorporated. The positive trends of recent decades will continue. But we are still, though less than in the past, "two nations," and one of the nations cannot be excluded so thoroughly from institutions that confer access to the positions of greatest prestige and power.

On what basis can we justify violating the principle that measured criteria of merit should govern admission to selective institutions of higher education today? It is of some significance to begin with that we in the United States have always been looser in this respect than more examination-bound systems of higher education in, say, Western Europe: we have always left room for a large degree of freedom for institutions of higher education, public as well as private, to admit students based on non-academic criteria. But I believe the main reasons we have to continue racial preferences for blacks are, first, because this country has a special obligation to blacks that has not been fully discharged, and second, because strict application of the principle of qualification would send a message of despair to many blacks, a message that the nation is indifferent to their difficulties and problems.

Many, including leading black advocates of eliminat-

ing preference, say no: the message would be, "Work harder and you can do it." Well, now that affirmative action is becoming a thing of the past in the public colleges and universities of California and Texas, we will have a chance to find out. Yet I wonder whether the message of affirmative action to black students today really ever has been, "Don't work hard; it doesn't matter for you because you're black; you will make it into college anyway." Colleges are indeed looking for black students, but they are also looking for some minimal degree of academic effort and accomplishment, and it is a rare ambitious African American student seeking college entry who relaxes because he believes his grades won't matter *at all*.

One of the chief arguments against racial preference in college and professional school admissions is that more blacks will drop out, the quality of blacks who complete the courses of instruction will be inferior, and they will make poorer lawyers, doctors, or businessmen. Dropping out is common in American higher education and does not necessarily mean that one's attendance was a total loss. Still, the average lower degree of academic performance has, and will continue to have, effects even for the successful: fewer graduating black doctors will go into research; more will go into practice and administration. More blacks in business corporations will be in personnel. Fewer graduating black lawyers will go into corporate law firms; more will work for government.

And more will become judges, because of another and less disputed form of affirmative action, politics. Few protest at the high number of black magistrates in cities with large black populations—we do not appoint judges by examination. Nor do we find it odd or objectionable that Democratic presidents will appoint more black lawyers as judges, or that even a Republican president will be sure to appoint one black Supreme Court justice. What is at work here is the principle of participation. It is a more legitimate principle in politics and government than it is for admission to selective institutions of higher education. But these are also gateways to power, and the principle of participation cannot be flatly ruled out for them.

Whatever the case one may make in general for affirmative action, many difficult issues remain: What kind, to what extent, how long, imposed by whom, by what decision-making process? It is important to bear in mind that affirmative action in higher education admissions is, for the most part, a policy that has been chosen (albeit sometimes under political pressure) by the institutions themselves. There are racial goals and targets for employment and promotion for all government contractors, including colleges and universities, set by government fiat, but targets on student admissions are not imposed by government, except for a few traditionally black or white institutions in the South.

Let us preserve this institutional autonomy. Just as I would resist governmentally imposed requirements that these institutions meet quotas of black admissions, so

would I also oppose a judicial or legislative *ban* on the use of race in making decisions on admission. Ballot measures like Proposition 209 are more understandable given the abuses so common in systems of racial preference. But it is revealing that so many other states appear to have had second thoughts and that the California vote is therefore not likely to be repeated. (A recent report in *The Chronicle of Higher Education* was headlined "LEGISLATURES SHOW LITTLE ENTHUSIASM FOR MEASURES TO END RACIAL PREFERENCES"; in this respect, the states are not unlike Congress.)

We should retain the freedom of institutions of higher and professional education to make these determinations for themselves. As we know, they would almost all make room for a larger percentage of black students than would otherwise qualify. This is what these institutions do today. They defend what they do with the argument that diversity is a good thing. I think what they really mean is that a large segment of the American population, significant not only demographically but historically and politically and morally, cannot be so thoroughly excluded. I agree with them.

I have discussed affirmative action only in the context of academic admissions policy. Other areas raise other questions, other problems. And, even in this one area of college and university admissions, affirmative action is not a simple and clear and uncomplicated solution. It can be implemented wisely or foolishly, and it is often done foolishly, as when college presidents make promises to protesting students that they cannot fulfill, or when institutions reach too far below their minimal standards with deleterious results for the academic success of the students they admit, for their grading practices, and for the legitimacy of the degrees they offer. No matter how affirmative action in admissions is dealt with, other issues remain or will emerge. More black students, for example, mean demands for more black faculty and administrators and for more black-oriented courses. Preference is no final answer (just as the elimination of preference is no final answer). It is rather what is necessary to respond to the reality that, for some years to come, yes, we are still two nations, and both nations must participate in the society to some reasonable degree.

Fortunately, those two nations, by and large, want to become more united. The United States is not Canada or Bosnia, Lebanon or Malaysia. But, for the foreseeable future, the strict use of certain generally reasonable tests as a benchmark criterion for admissions would mean the de facto exclusion of one of the two nations from a key institutional system of the society, higher education. Higher education's governing principle is qualification—merit. Should it make room for another and quite different principle, equal participation? The latter should never become dominant. Racial proportional representation would be a disaster. But basically the answer is yes—the principle of equal participation can and should be given some role. This decision has costs. But the alternative is too grim to contemplate. •

BOOKS & The Arts

Stanley Kauffmann on Films

Cops and Perpetrators

Three phenomena in a row. Two weeks ago John Sayles, last week Brigitte Roüan, now Takeshi Kitano.

Often though it happens, it always feels odd to make a director's acquaintance with one of his later films. *Fireworks* (Milestone) is Kitano's seventh film, but it's the first by this Japanese sensation to get American theatrical release. As was true of most of his previous films, he wrote and starred in *Fireworks*. Immediately we want to know what led to this film. How does it compare with his previous work?

Some facts about him are available, but they read like fantasy. Besides his film activity, we're told, he also appears in seven weekly TV shows. (As performer, he uses the name Beat Takeshi.) He writes newspaper and magazine columns and has published 55 books, including poetry, novels, and essays. He is 51. *Fireworks* doesn't prove that his record is possible, but it certainly is the work of a manifold talent.

This new film is a figurative translation of an American film. The way that the American model was ingested and adapted testifies to several kinds of perception. In a barebones view, *Fireworks* is just one more drama about detectives in their public and private lives. This time it's Tokyo instead of an American metropolis, with the Yakuza instead of the Mafia, and it dwells on professional and personal travails as do numberless American films and TV shows. What's more, like so many domestic films, it views the police as a kind of border patrol, guarding the line between law and illegality for lawkeepers as well as lawbreakers.

Nonetheless, *Fireworks* is very much itself—the work of a filmmaker nurtured in his own culture who is using an American armature as support for his own sensibility. That sensibility is patent in both content and form. In content, for instance: a detective is shot, and his legs are paralyzed. He contemplates suicide; then a friend suggests painting. He begins to see the world, especially flowers, as paintings—which we also see—and this new vision keeps him alive. (The paintings, by the way, are by Kitano.) In form: a bloody struggle between two detectives and a killer is glimpsed from time to time before it actually happens until at last it does happen. The device not only implies inevitability, it lifts the film out of the linear into complexity.

The story's main strand concerns another detective whose wife is dying of leukemia, who has borrowed money from the Yakuza to take care of her, and who, with an intricate scheme, robs a bank to help make her last days easier. This detective is Kitano's role, and his granitic face, especially in violent scenes,

seems to combine Japanese stoicism with Bogart taciturnity.

The camera work, by Hideo Yamamoto, is up to the national level, which in Japan is high. The music, by Joe Hisaishi, is used reticently: some stretches have little or no music, thus enhancing grimness. Kitano directs with smooth aggression, plunging quickly to what he wants and stating everything clearly, almost brusquely. All of the actors serve the film well.

Fireworks leaves us eager for more Kitano, and it's good to learn that another of his films is coming next month.

Once again the Coen brothers are the brightest boys in film school. Their last picture, *Fargo*, edged out of solipsistic exhibitionism to some extent, but *The Big Lebowski* (Gramercy), written by Joel and Ethan Coen, directed by Joel and produced by Ethan, slips back into pointless showing-off.

The plot—a term that exaggerates—is about a California loafer named Lebowski, in his 40s, and a rich big shot in his 60s, also named Lebowski. They are not related. The “little” Lebowski is mistaken for the “big” one by thugs trying to collect a debt. Out of this mildly fertile premise, which might have been used ingeniously in French hands, comes absolutely nothing. Not one moment of entertainment. The film is just a lot of scenes, one after another, full of bowling-alley dialogue (the lesser L. hangs out with pals in a bowling-alley). On this slow, diddle-along tedium, the Coens try to aggrandize texture with tricks—we follow a ball down the lane, we get the little L.'s fantasies—but the film flops so badly that we almost—almost—stop being bored and feel sorry for the brothers.

Jeff Bridges plays the minor L. and can't make him interesting, but it's hard to see how anyone could. The Coens try to give his drifting some point by sticking in lines about his being a former 1960s radical who was left stranded and dry; but this is mere window-dressing on a dummy. John Goodman, who is sometimes fat and funny, is only fat here, as a Bridges pal. Sam Elliott has an inserted

FILMS WORTH SEEING

Amistad. Steven Spielberg's excellently made, if factually compressed, account of an 1839 slave rebellion. Memorable. (Reviewed 12/22/97) **Men with Guns.** John Sayles investigates Latin American political horror via a physician's odyssey through the interior of his country. Except for the symbolic finish, a gripping work. (3/23/98) **Post Coitum.** The French writer-director-actress Brigitte Roüan does all three jobs superbly in this drama of an affair between a fortyish married woman and a volcanic young man. Extraordinary treatment of a familiar situation. (3/30/98) **Wag the Dog.** Tired of Monica Lewinsky? Try a fictional antecedent, more unabashedly funny. (2/2/98) —SK

role as an old Westerner at the bowling-alley bar and is flannel-mouthed with clichés. If John Turturro's part were more than a walk-on, he might have helped the picture—as a Latino rooster.

Julianne Moore is also involved as the big L.'s daughter and as a figure in some vacuous dream scenes. The only thing I can thank this film for is that it impelled me, the next evening, to look again at the tape of *Vanya on 42nd Street*, to refresh myself with the real Moore in her exquisite performance of Yelena.

P.S. Post Sarandon, that is. Since *Twilight* I have thought recurrently of the way our culture treats actresses. In *Twilight*, Paul Newman, now 73, has a sex scene with Sarandon, who is much younger. How many sex scenes will she have when she's 73?

The point is not the sex in itself or that films often have older men with

younger women but rarely the other way around. The point is the fate of talented women in the film world. Sex scenes apart, how many leading roles are written for talented women as they age? Paul Newman or Jack Nicholson will have leading roles as long as they want them; starring roles were arranged for James Stewart and John Wayne long after their sex appeal had ceased to be a major factor. But where are, where will be, Debra Winger and Anjelica Huston, to name only two who are in their very early later years? Meryl Streep is working along, but apparently the pickings are getting slimmer for her.

Anyway, exceptions only serve their usual purpose. The rule, in our culture, is that when women pass beyond obvious and immediate sexual attraction, their talent no longer matters. Only smaller parts may, possibly, come their way. What a waste. •

image of a "funny lady taking charge," according to *Time*. Here are juicy, upscale tribunes of female empowerment: savvy yet vulnerable, fallible yet likable, feminist yet not.

The names "Ally" and "Dharma" have already seeped into the language as an affectionate shorthand for a kind of scrunched-nose cuteness and girl-can't-help-it charm. For all their artful goofiness, though, the new heroines are surprisingly dither-free when it comes to the subject of sex. Urged on by Renee, her district-attorney roommate, Ally McBeal, who is portrayed by Calista Flockhart, prowls nightclubs, flirts with rabbis, and engages in strenuous sex with a particularly well-endowed art school model. "Where does it say that women can't act like men?" Ally cries. Meanwhile, Dharma and Greg, who are played by Jenna Elfman and Thomas Gibson, are the '90s odd couple with a postfeminist twist: he's the sweet, sincere boy who wants to share his deep thoughts, she's the party girl who just wants to fornicate. "I would like to propose a toast to my husband, Greg Montgomery," Dharma says, "who works his butt off to put away a bunch of really bad guys—and still has the energy to come home and make hot jungle love to his wife." And Veronica Chase, who is played by Kirstie Alley, also has sex on the brain. When one of her employees, an addle-brained former model, hopelessly botches a press release, the CEO is unconcerned. "He is so pretty," she sighs. And her top executive adds, "Don't you just want to put him in a blender with a frozen banana and drink him like a smoothie?" It is startling to see these women standing around in their outfits, assessing the male talent and looking over boys the way boys had always looked over girls. Finally, you think, the tables in Hollywood have been turned.

To the extent that these creatures represent anything at all—the verisimilitude of television is never to be assumed: prime time is fake until proven real—they are the mainstream apogee of what *Esquire* magazine called "do-me feminists." The do-me feminist is plucky, confident, upwardly mobile, and extremely horny. She is alert to the wounds of race and class and gender, but she knows that feminism is safe for women who love men and bubble baths and kittenish outfits; that the right ideology and the best sex are not mutually exclusive. She knows that she is as smart and as ambitious as a guy, but she's proud to be a girl and girlish. She is a little like Monica Lewinsky.

These avatars of female carnality, in addition to supplying fodder for whither-

Ally, Dharma, Ronnie, and the betrayal of postfeminism.

Canny and Lacy

BY RUTH SHALIT

Over the last few years, a growing number of gender scholars, cultural studies dons, images-of-women enthusiasts, and other arbiters of the male gaze have denounced prime time as the time of patriarchy. In *Beverly Hills 90210: Television, Gender, and Identity*, E. Grant Hunt finds that Aaron Spelling's oeuvre "exemplifies the microworkings of hegemony." In *Reading The X-Files*, Lisa Parks finds that "the show reiterates the dominant norms of heterosexual femininity." Outside the academy, television writers have also detected the workings of hegemony. "Females aren't getting much of a break in the TV hours that matter most," writes Howard Rosenberg in the *Los Angeles Times*. "Won't TV's patriarchy take note?"

Well, it has. In May 1996, Warren Littlefield, the president of NBC, confessed that the hegemons of General Electric had experienced a "wake-up call" regarding the need for gender justice on television. The solution, Littlefield explained, was a dose of new, women-friendly fare. And so, in the fall of 1997, NBC unveiled its first overt appeal to the sisterly sentiments of female consumers. "Must-She TV," a shopworn cache of chick shows including *Suddenly Susan* and *Caroline in*

the City, was slated for the beginning of the week, where it was supposed to be embraced as a respite from the rough pleasures of *Monday Night Football*. So far, the experiment has been something of a disappointment. ("Must-Flee TV," yawned *TV Guide*.)

The real trailblazing was occurring elsewhere. Three glossy, high-profile new shows—*Ally McBeal* (Fox), *Dharma and Greg* (ABC), and *Veronica's Closet* (NBC)—were said to have devised a new breed of feminist heroine: untrammelled, assertive, exuberantly pro-sex, yet determined to hold her own in a man's world. The characters of Ally McBeal, a flustered but lovable girl-power litigator, and Dharma Finkelstein, a freewheeling hippie chick who marries a stuffed-shirt D.A., were singled out as the incarnation of the postfeminist ideal. *Entertainment Weekly* pronounced them "brainy babes"; the *New York Post* hailed the ascendance of "smart women in very tight skirts." The character of Veronica Chase (Kirstie Alley), known as Ronnie, a fortysomething lingerie mogul with body-image problems, has also won approbation as a new-style role model. As she flutters diaphanously about her showroom, displaying the very latest in intimate apparel, Ronnie presents a progressive

feminism symposiasts, may offer a solution to a perennial network conundrum: how to pander to politically correct sensibilities while attracting male viewers in droves. Despite their origins in the must-she henhouse, *Ally McBeal*, *Dharma and Greg*, and *Veronica's Closet* have established themselves as equal-opportunity hits, drawing a deluxe audience of upscale young urban adults of both sexes. The shows have an unbeatable combo: an aura of sexiness and moral message. *Ally McBeal*, the career vixen who likes to talk about penis size, can arouse feelings of liberation among female viewers and less noble feelings among male viewers.

The packaging of prudence as an anthem of emancipation is hardly surprising, given the tendency of social-minded critics to mistake television for life, and to hail each new season as another victory in the long march to gender enlightenment. "A glance through the new fall series makes it look as though Gloria Steinem has taken command of the airwaves," declared the *Los Angeles Times*—in 1982. The paper was referring to female-friendly sensations such as *9 to 5* and *Remington Steele*, as well as to *Cagney and Lacey*, the CBS drama about two righteous New York City policewomen. *Cagney and Lacey* was eventually pulled amid concerns over its crypto-Sapphic content. (A CBS executive delicately explained that they "seemed more intent on fighting the system than doing police work. We perceived them as dykes.") But a year later came *Murphy Brown*, prompting *Newsweek* to devote its cover to "a revolutionary new force in prime-time.... Its name is 'Womanpower.'" *Newsweek* cited *Murphy Brown* and *Designing Women* as evidence of its cheerful thesis that "a fresh breed of female is seizing control of prime time."

The old TV women were true-blue activists, prone to harangues and tirades about the social origins of women's oppression. "Until women are liberated, men really won't be either," Cagney and Lacey assured each other as they prowled the streets of Manhattan. And:

"We don't really have to be twice as good to be equal." The stars of *Designing Women* traded similar gal-gal aperçus. "I'm mad because we're fifty-one percent of the population and only two percent of the U.S. Senate," ranted decorator Julia Sugarbaker, after a friend looked at her cross-eyed. "I'm mad because in a Seminole, Oklahoma police station, there's a poster of a naked woman that says 'Women make bad cops.' I'm mad because in spite of the fact that we scrub America's floors, have all the babies, and commit very little of

cracking and squeaking with pride. "Will I have one of those pink Corvettes? And maybe some of those teeny-tiny little plastic shoes? ... I can't decide whether I should be holding a copy of Proust or wearing a feather boa." And at the mention of Proust, a laughtrack: the Ivy League in Burbank.

But Veronica's euphoria fades when she is presented with a prototype of the Ronnie doll, who, like her real-life inspiration, is endowed with what the company diplomatically refers to as a "beautiful, healthy body." "I especially

like the way the boobs actually rest on the stomach," she observes. The episode's climax comes when the CEO of Sherman Toy Company allows our heroine to watch through a two-way mirror, *Salvator Minuchin*-style, as the Ronnie doll has her play-group premier. The debut is not a success. The girls strip Ronnie out of her plus-sized outfit, place a tiny harness around her neck, and hook her up to the front of a wagon. "They're making me a plow-horse!" Ronnie screams. By the episode's conclusion, she has convinced the toy manufacturer to scrap the line of healthy-body role model dolls. "I know I should change the world," Ronnie exclaims. "But right now, I just want to change my ass." These days that is revolution enough.

Ally McBeal is similarly impervious to the claims of feminism as a social movement, preferring instead to cultivate her own garden. "If women really wanted to

change society, they could do it," the tiny, moody lawyer declares. "I plan to change it. I just want to get married first." TV's first generation of single-girl adventurers preached that you could be single and still be a whole person; that you didn't need a husband to have a complete life. Twentysomething Ally, in a precocious lather about the prospect of her biological clock ticking away, sees it a different way. "All I ever wanted was to be rich and to be successful and to have three kids and a husband who was waiting home for me at night to tickle my feet," she wails in the first episode. "And look at me! I don't even like my hair!"



ALLY McBEAL BY VINT LAWRENCE FOR THE NEW REPUBLIC

the crime, still we make only fifteen cents on the dollar.... All we want is to be treated with equality and respect. Is that asking too much?" Feminism was still too young to be entertaining.

So what are the significations of this year's crop of postmodern, postfeminist, post-therapeutic charmers? In a recent episode of *Veronica's Closet*, the fluff-headed CEO is delighted by the news that a public-spirited toymaker has decided to include her in a new line of "role model" dolls, created to salve the self-esteem of little girls who cannot live up to the Barbie fantasy. "This is so great!" Veronica says, her hoarse voice

As the blowsy matriarch of an international panties empire, Veronica Chase has "got the universe on a string.... She's—got—everything!" proclaims the show's theme song. Veronica's Manhattan office is a kind of pretty-in-pink pleasure spa, in which Veronica and her top executive Olive are pampered and fussed over by a revolving troupe of bare-chested male attendants. Yet, for all her success in her chosen field, Ronnie, like Ally, is a miserable failure in her personal life. Having wrenched herself away from her philandering husband, she spends much of the rest of the season in an adorable dither of loneliness and misery. Olive counsels her to look on the bright side: "This is your chance to grow as a person, okay?... You can march on Washington. You could spend more time with your woman friends." "I have no woman friends," she wails.

Dharma represents the flip side of this gilded-cage singlehood: she is a blissed-out newlywed, a home-bound lovebird feathering her modest nest. The running gag is that she and Greg are opposite numbers: he's a lock-jawed wasp, heir to a family fortune; she's an insouciant tree-hugger who grew up in a solar sod hut. She says tomato, he says tomahto. And they follow their bliss to a domestic euphoria not seen since the days of Donna Reed. In this fairy tale, Dharma has no career to speak of, so she has a great deal of leisure time to sit in the lotus position dreaming up new ways to surprise her husband with fresh displays of bohemian expressiveness. That could mean whipping up a bright new drink in the blender; or commandeering a school bus for a private joyride through the streets of San Francisco; or simply dragging a mattress up the stairs to the roof of their apartment building, where she and her humdrum hubby can whoop it up like foals by the light of the moon. Greg loves it. "Have you ever seen him so happy?" marvels Dharma to her snooty mother-in-law. "No I have not," snaps Mrs. Montgomery. "And I blame you."

But even the disdain of her upper-crust in-laws cannot dampen the spirits of this giggly-girl hausfrau. In a recent episode, Greg's mother lashes out at Dharma for encouraging Greg to abandon his law career for a stint as a short-order cook. "Dharma," she fumes, "do you have any idea what it means to be a Montgomery? This family has a long and proud tradition. We build communities. We shape policy.... It is our job as Montgomery women to protect and pass on that tradition." Dharma, ever the strong woman, jumps in to correct her mother-in-law. "Noo-oo," she says. "It is my job to keep my husband happy."

Mary Richards, remember, was supposed to be good at her job—hence her regular anger at the witting and unwitting misogyny of Lou Grant. So, too, Murphy Brown, who is so attached to her job that she cannot even bear a one-day suspension for insubordination: "My work is just about the most important thing in my life," she wails. The new working women, by contrast, wear their careers as lightly as their Kate Spade accessories. To them, a job is a lifestyle accoutrement, a crisp stratagem to make themselves more attractive. Ally McBeal is "a good lawyer, but not a great lawyer," Flockhart has told reporters. Indeed, Ally "didn't even want to be a lawyer";

she just had to follow her boyfriend to law school. As a career-girl role model, Veronica is an even bigger flop. The show, which congratulates itself on being a feminization-of-power anthem, is really a relentless showcase of female incapacity. Here is the CEO as basket case, in constant need of support and approbation. "Comfort me, oh comfort me," the lonely mogul cries out, at least once per episode; and just like that, a entourage of sycophants and thong models materializes at her side. With vigilant tenderness, they fetch her junk food, troll the aisles for Vagisil, rummage through her dog's vomit in search of undigested pills.

The new heroines of prime time are

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not particularly interested in ameliorating the collective wrongs that afflict women. They are conventional glamour girls, with perfectly soufflé hairdos and designer finery that positively glows with newness. Dharma, for all the Buddhism of her name, is an unrepentant clotheshorse. No flea-bitten hippie togs for her: she pads about their spacious loft in flouncy fur-trimmed negligees and a white leather maxicoat, fresh from last month's *Vogue*. Ally McBeal is also a girly girl, more concerned with fulfilling her consumerist fantasies than improving the plight of women. After Ally stages a successful ploy to expose the villainy of a senior partner whom she has charged with sexual harassment, she calls her roommate to share the good news. "It actually worked, Renee!" Ally burbles. "He's going to have to settle! Now maybe we can get those new drapes." Slumping dejectedly down the street after a brutal setback in court, she surrenders to her equivalent of despair. "Sometimes I'm tempted to become a street person, cut off from society," she tells us, in voice-over. "But then I wouldn't get to wear my outfits."

Yet these feminine virtues are accompanied by feminine weaknesses—by the painstaking vulnerability that has become the trademark of television's postfeminists. Veronica Chase's fluttery unsureness, her crackbrained mannerisms, her inability to build a stable life for herself—all are supposed to be part of her charm. And insecurity also happens to be the touchstone of the child-woman Ally McBeal. Ally feels compelled to remind us again and again what a mess she is: the pain she feels takes the form of self-denigration bordering on self-hatred. "Oh, how did I get to be such a mess so soon in my life?" she moans. Told that men go nuts for her, she replies despondently, "Only until they get to know me."

So whom should we prefer: Cagney and Lacey, in all their pristine *Ms.* magazine earnestness, or Ally McBeal and the other weepy exempla of the new ideal of high-powered vulnerability? What explains the craving, at this moment, for images of sophisticated women humbling themselves? A part of the reason, surely, is the apotheosis of do-me feminism as a Hollywood growth industry. For it is really nothing but a male producer's fantasy of feminism, which manages simultaneously to exploit and to deplore, to arouse and to moralize.

This vision of girl power as a voyeuristic contrivance is most fully realized on *Ally McBeal*. In the very first episode, Ally is sexually harassed by senior partner Jack Billings. The scene, which unfolds

from the harasser's point of view, takes place in the law firm's plush library. We see Ally standing on a high stool as she replaces a volume on a top shelf, oblivious to the sneaky-piggy colleague approaching her from behind. Suddenly, he pounces, planting both hands on her bottom and squeezing with exaggerated relish. "Hey!" Ally yelps, stumbling perkily in her high heels. The scene is stretched out voluptuously: the approach, the squeeze, the whirling around, the deep expression of shock and violation in Ally's eyes. It is replayed later in the show and in subsequent episodes (sort of like Bill and Monica at the rope line), as Ally relives her experience of harassment in neurotic flashback. And poor Ally must also contend with other on-the-job indignities. Much of the plot unfolds within the sleek confines of the firm's unisex bathroom, a futuristic arcade of chrome and glass that affords the opportunity to present numerous, discomfiting shots of a flustered Ally surprised on the toilet by one of her nefarious male coworkers: more cutting-edge prurience disguised as cutting-edge politics.

Ally McBeal, even more than the other shows, has been embraced as a canonical statement of postfeminist exhilaration. *The New York Times*, noting that the show has "captured the imagination of young professional working women," has praised its creators for training public attention on the myriad problems faced by working women: "sexual harassment, relationships between an employee and a boss, romance in and out of the office." *Newsweek* went so far as to convene a panel of unmarried twentysomething professional women, in hopes of discerning the source of Ally's allure. The conclusion was that Ally served as a kind of therapeutic device for professional women gratified to realize that they are not alone in feeling weak and even tremulous on the job. "It is what many feminist authors have referred to as the 'imposter syndrome,'" *Newsweek's* writer explained, citing a scene in which Ally, tongue-tied at a meeting, has a sudden vision of herself as a little girl in an oversized chair. "It is women's nagging fear . . . that their success is a sham and one day they will be exposed."

But this brings us to another problem with this saint in a short skirt. It is that America's favorite litigator-gamine not only sees herself as a little girl, she also is a little girl. As an upscale exercise in the packaging of female inferiority, Ally McBeal is less Mary Richards than Angela Chase, the frazzled pubescent played by Claire Danes in the recent high school

weepie, *My So-Called Life*, still a hit in reruns on MTV. There is even a physical resemblance between Ally and Angela—the glossy bob, the rosebud breasts, the piquancy of the high cheekbones set against the low esteem. "Sometimes it feels like we're living in some kind of prison," muses Angela the privileged moppet. "And the crime is how much we hate ourselves." Though twelve years Angela's senior, Ally McBeal shares many of her cotton-candy miseries. "Love and law are the same," she tells us. "Romantic in concept—but the actual practice can give you a yeast infection." And in another girl-power Gumpism: "Men are like gum. After you chew, they lose their flavor."

But there is a difference. When Angela Chase lets fly with one of her girlish temper tantrums, it is cute—a part of the essential ridiculousness of adolescence. In a 30-year-old attorney, however, it is not cute. It is manipulative and infantile and demeaning. Ally McBeal seems determined to see herself as a fuddled schoolgirl. "A little girl playing in an old boy's club," she calls herself. In one episode, she refuses to join the partners and the clients in the conference room, airily informing her boss that "I have a problem in conference room meetings. I just get insecure. . . . I feel like the clients look at me like a little girl and I feel puny." Is this feminism or arrested development? In another episode, she is asked by the state public-defender's office to represent an accused prostitute. "I can't go to criminal court," whimpers the new feminist heroine of prime time. "I'm afraid of criminals." Then find another profession.

All this rigging, of course, is owed to the social and sexual imagination of David E. Kelley, Ally's creator. The liberalized, sensitized man who writes girls so right seems to take pleasure in stripping Ally of her authority, in making her look foolish and incompetent. He does this most famously in a series of cute visual gags in which the lawyer's innermost thoughts are played out on screen. The images positively seethe with hostility. Here's Ally, with an enormous foot stuffed in her mouth. There's Ally, being unloaded by a dump truck. He allows Ally her triumphs, of course; but Kelley seems more interested in dealing out setbacks, the kind that leave the supersensitive barrister acting like, well, a girl. He seems to delight in her chastisement, in the infliction of inordinate punishments for trivial vice. When Ally, running errands at a supermarket, stashes a tube of spermicidal jelly in her jacket pocket (she doesn't want anybody to see it in her cart), she is confronted,

handcuffed, and thrown in the slammer; her exasperated colleagues must interrupt their power lawyering to come to the station and bail her out. "They said you swiped some gyno cream," shouts her boss Richard Fish. "Any truth to that?"

Ally's colleagues are constantly trying to annex her feminine wiles for their own ends. After Ally informs her boss that she does not plan to attend a particular meeting, he commands her to show up, telling her she will be there "as estrogen," planted for the purpose of flirting with the other side's lead counsel. On another occasion, she is brought into a case as a counterweight to a successful female lawyer who has previously bested the firm many times. "It's not that she's such a great lawyer," one of Ally's colleagues explains. "But she's got this amazing smile. And judges just fall for it." The trial quickly devolves into a clash of the lawyer-babes, as Ally and her toothsome rival vie for the judge's favor. As the camera swirls, amid the soft lights and the soft music, the two women are shown in slow motion, smiling and prancing and finger-combing their golden hair.

If Ally's life is a twisty mess of erotic confusion, though, she has no one but herself to blame. Her attitudes toward sex and work represent the dark side of do-me feminism, where wholesome carnality shades into careerist cunning. In a recent episode, Ally makes a last-minute decision to enter into a case as co-counsel, for the sole purpose of sexually discombobulating the lawyer on the other side. He is Jack Billings, whom Ally has already sued for sexual harassment. The idea, she explains, is to "distract him a little bit.... My being at the table—Jackie boy loses focus." The ploy works. Billings is forced to settle. "The tables are turning," Ally's colleague gloats. But are they really? Using sex to fluster a hapless opponent is not an accomplishment; it is dysfunction, professional or personal.

But this postfeminist fusion of coquettishness and rage is Ally McBeal's stock-in-trade. When Ron Cheney, a prospective client whom Ally was supposed to ensnare over drinks, confesses that he doesn't actually have any questions about the litigation department, that this was just a pretext to find a way to be alone with her, Ally thinks: "Pig." But then she looks at him and decides that he's kind of cute. After drinks, she permits him to kiss her. "I saw a piece of cute meat," Ally tells her roommate later. "And I said to myself, You only live once! Be a man!" On the second date, Cheney neglects to kiss Ally good night. Bad

move. "Most men would have asked to sleep with me," Ally fumes. "Why can't he be a man and just paw me a little? I am a sexual object, for God's sake. He couldn't give me a little grope?"

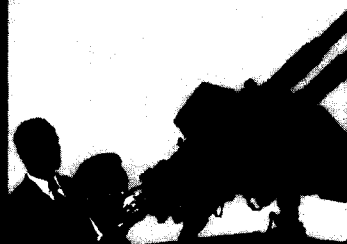
Ally's passive-aggressive response is to turn her law-firm associates against Cheney. She finds a professional use for the kiss that first troubled her. "I don't think we should accept this client," she tells her colleagues. "I'm not comfortable representing him.... I don't even want him in these offices." After he has been dismissed by the firm, Cheney confronts Ally about her behavior. "I thought we were getting along," he says. "Next thing I know Richard Fish is turning down my business." Replies Ally, "You're just going to have to take my word on this. It's not going to work out.... I'm going to have to ask you to leave." "You want me to leave?" Cheney asks, incredulous. "No," we hear Ally say to herself. "Yes," we hear her say to him. The ugly scene is played as zany comedy. The innuendo about harassment is merely Ally's neurotic defense mechanism, just another one of her quirks.

In addition to being vulnerable, our heroine is emotional. The sliding oak door leading to Ally's office is often closed. "Don't go in there," visitors are told. "Ally's having an upset." At least

once an episode, Ally herself pridefully reminds us that she's crazy as a loon. "I like being a mess," the lawyer declares. "It's who I am." And: "I know I'm a simpering little needy thing." And: "Balance is overrated. What if I don't want to be balanced?" And why should she? As David E. Kelley has set things up, Ally's imbalance is a badge of honor. The Boston legal scene is a kind of difference-feminist utopia, and Ally McBeal is a Carol Gilligan heroine, a character who is choking on feelings; and who never doubts her feelings are an asset, a source of power. Here is a lawyer who is valued not for her legal acumen, but for the weepy integrity of her ruined dreams. Ally's boss assigns her to join a male colleague on a case because "the judge has great respect for John's legal mind—and for your sense of romance. She needs nudging from a romantic idealist."

Ally's romantic idealism, her emotionalism, her intuitiveness, her girlish indifference to such manly concerns as law and logic and reason, do not just make her a superior person. They also make her a superior lawyer. Like a killer precedent or a surprise witness, her neurosis is a passport to truth. In one recent episode, a hearing on Ally's professional misconduct devolves into a soppy ode to the relational woman, as colleagues

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author of *In the Shadow of FDR:
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of the embattled McBeal rise from their chairs to testify to the glories of different-voice lawyering. Her associate Billy Thomas (he is also her ex) tells a three-judge panel:

There are those who see the law in black and white. Ally is forever seeing grays. She's constantly trying to make sense of an arena that, for the most part, is messing her up.... This is a woman who isn't afraid of being emotional. She isn't scared of being weak. She knows part of being alive is a willingness to get in the same room with your pain. And so, I don't care what kind of a club this is. We're all a lot better off with her in it.

Ally, you see, is so glamorously fragile, so irresistibly anxious, that she has to be taken care of. She is simply too tender for this world. But who wouldn't be sensitive and vulnerable, with money and swell clothes and a script that spares you the full consequences of your mischief? These career gazelles of prime time, whose professional errors are dismissed as hormonal tremors, who are taken such good care of and who give so little back, may indeed be the heroines of postfeminism. But they are also what has given postfeminism a bad name.

Ally McBeal is a slap in the face of the real-life working girl, a weekly insult to the woman who wants sexual freedom

and gender equality, who can date and litigate in the same week without collapsing in a Vagisil heap. These are the women who will not see Ally as especially feminist or especially admirable. They are not victims of "imposter syndrome." They know that it is Ally who is the imposter.

But this is a particularly clever variety of imposture. The trick of *Ally McBeal*, its "originality," is to use verisimilitude to disguise a lack of truth. It tricks out its stereotypes in the pseudo-naturalism of brand names and cultural markers. So far this season, characters have made references to Botox injections, John Gray, *The Rules*, Johnny Mathis, Ruffles with Ridges, *Henderson the Rain King*. The real world! (The real world of the people who make the show, too: "Oh Ally," says Renee, "you're not a spontaneous person. You wouldn't go to bed with a man unless you storyboard it first.") The knowingness is so unexpected, so intoxicating, so cool, that you forget that what you are watching is a cartoon, a Gilliganesque caricature, a demographically brilliant iteration of Jessica Rabbit. The zeitgeist impresarios who produce these demoralizing shows have made male power and female powerlessness seem harmless, cuddly, sexy, safe, and sellable. They have merely raised conservatism's hem. •

More audaciously, Ackerman argues that the Constitution was amended completely outside the precincts of Article V during the New Deal, when no formal amendments were made except the irrelevant ones (irrelevant, that is, to his argument) that abolished Prohibition and moved up the date on which the president takes office from March to January. The New Deal "amendments" that count for Ackerman are decisions by the Supreme Court that expanded federal power over the economy and shifted the emphasis in constitutional liberty from economic liberty to political and personal liberty. He does not consider the absence of formal constitutional text a critical difference between the Reconstruction amendments and the New Deal amendments, because the significance of the Reconstruction amendments, for Ackerman, lies not in what they said—not, that is, in the enacted text—but in what they represented: a fundamental shift of power from the states to the federal government.

The model for the two usurpative-seeming amendment processes of Reconstruction and the New Deal is the adoption of the original Constitution. For the framers exceeded their terms of reference from the Continental Congress. The Congress had authorized the convening of a constitutional convention to amend the Articles of Confederation—and the Articles of Confederation required that amendments to them be unanimous. In all three instances—the Founding, Reconstruction, the New Deal—compliance with the legally prescribed requirements for amendment, or, in the case of the original Constitution, promulgation, would have taken too long. Ackerman thinks that this history shows that Article V is inadequate—and also that it has been amended. Amended, that is, without a word being changed. (Still another example of an amendment that violates Article V!) And those who deny Ackerman's thesis are derided as "hypertextualists" (an unfortunate choice of words, given the very different meaning that the word "hypertext" bears in computereze).

Criticism of Article V is not all there is to Ackerman's argument. There is also his large historical claim that we have had, in this country, three constitutional "regimes." We live not under the 1787 Constitution as amended and interpreted, but under the 1787 Constitution, the Reconstruction Constitution, and the New Deal Constitution. Ackerman is not alone, of course, in believing that the "Constitution" under which we live today bears only a slight resemblance to the document drafted more

This Magic Moment

By RICHARD A. POSNER

We the People Volume 2: Transformations by Bruce Ackerman

(Harvard University Press, 515 pp., \$29.95)

Article V of the Constitution of the United States creates a procedure, or rather two procedures, for amending the Constitution. The first requires that each house of Congress approve a proposed amendment by a two-thirds vote and that three-fourths of the states then ratify the proposal. The second requires that each house vote, again by a two-thirds margin, to summon a constitutional convention to propose amendments. Any amendment proposed by the convention must, as under the first procedure, be ratified by three-fourths of the states. The second procedure has never been used. The original Constitution was promulgated by a convention

and then ratified by the states, but of course it was not a convention summoned pursuant to Article V, which did not yet exist.

For some years, Bruce Ackerman has been trying to show that Article V is not exclusive: that the Constitution can be amended without complying with its terms. As evidence, he cites the amendments adopted after the Civil War—the Thirteenth, Fourteenth, and Fifteenth Amendments—which (he says) violated Article V because the Southern states were coerced to vote for them. Without that coercion, those amendments would not have been ratified, at least not as promptly as they were, by the required three-fourths of the states.

than 200 years ago. His originality lies in not regarding this situation as the consequence of misinterpretations, or judicial aggressiveness, or the need to adapt the written Constitution to social change through a process of interpretation. For Ackerman, it is owed to what he claims is the dual nature of American politics, which is America's distinctive contribution to the theory and practice of democracy.

Most of the time, Americans are pretty apathetic about politics. In Ackerman's analysis, this is the time of "ordinary politics," the sordid or uninspiring business of interest-group politics, logrolling, lobbying, quasi-bribery, and misrepresentations. In times of crisis, however, people become attentive and involved. The policies that emerge during these constitutional "moments" of heightened public attention to political issues constitute a higher order of lawmaking, to which the courts and other agencies of government are obliged to defer—until the next upheaval yields a comparably authentic expression of public opinion. It would thus be unconstitutional for the Supreme Court to overrule the leading decisions of the New Deal era, even if those decisions were erroneous interpretations of either the original Constitution or the Reconstruction amendments.

Ackerman's analysis would rehabilitate a host of decisions by the Supreme Court that have seemed erroneous or at least questionable to most constitutional scholars. Those decisions include *Lochner* (striking down a state maximum-hours law), *Adkins* (striking down a federal child-labor law), *Radford* (striking down a federal debtors-relief law), *Griswold* (striking down a state law prohibiting the use of contraceptives by married couples), and *Roe v. Wade*. Ackerman argues that the first three of these decisions appropriately honored the economic libertarian premises of the Reconstruction amendments, which were intended to protect "free labor" not only by outlawing slavery, but also by preventing governmental interference with employment contracts; and that the last two decisions honored the personal libertarian premises of the New Deal "amendments." Thus Ackerman challenges the conventional interpretation of the history of constitutional law. That interpretation denies that the Constitution has been amended as extensively as Ackerman believes; and it attributes overruled decisions such as *Plessy* and *Lochner* to error rather than to supersession by constitutional amendment; and it honors the dissenters in such cases (such as the first Justice Harlan, Holmes, and Brandeis) rather than the authors of the majority opinions.

Ackerman also believes that recently there was a constitutional "moment" that might have been. In his view, Ronald Reagan, and more recently Newt Gingrich, attempted to launch an extratextual amendment process aimed at overruling the New Deal "amendments"; but Reagan was thwarted when his nomination of Robert Bork to the Supreme Court failed of Senate confirmation, and Gingrich was thwarted when Clinton was reelected President.

In 1991, Ackerman published the first volume of a projected trilogy explaining and defending the position that I have summarized (minus, of course, the reference to Gingrich). That first volume, subtitled *Foundations*, was intended to explain how his proposal would work and to justify it by reference to his dualist conception of democracy. Ackerman's second volume is concerned primarily with showing through detailed historical inquiry how the process of extratextual amendment has worked, and how it can be made to work better. He scatters only the barest hints of what remains to be accomplished in his third volume.

I admire Ackerman's tenacity, imagination, and lucidity; but I find his project unconvincing. The natural inference from Article V's specification of procedures for amending the Constitution is that they are exclusive. To deny this is like saying that it is possible, without a formal amendment of the Constitution for Congress or the president (or perhaps the courts), to add to the federal government a third house of Congress, a dictator who would give orders to the president, or a court empowered to review decisions by state courts on matters of state law. I'm sure that Ackerman does not believe that Congress can do these things. Given his skepticism about text, however, I'm not sure on what grounds he could argue against it. Consistency would require him to concede that if Congress did any of these things and "got away with it," in the sense that after the predictable uproar "the people" accepted the innovation, the innovation would be a part of the Constitution, even though there had been no formal amendment.

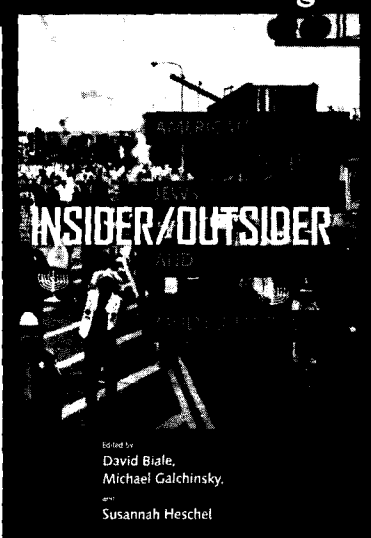
Ackerman's proposal makes Article V inadequate, rather than revealing and curing its inadequacy. If judges did not enforce extratextual amendments—if they had not held much of the early New Deal legislation unconstitutional because it infringed the extratextual Reconstruction amendments—there would be no, or much less, felt need to have recourse to Article V. The New Deal legislation would have been upheld (most

of it, anyway), and so Roosevelt would not have had to try to pack the Supreme Court.

Article V would not have required the Court to invalidate the Reconstruction amendments, as Ackerman supposes. The Court could have taken the position—in fact, it did take the position—that it is not a proper judicial function to look behind the face of formally adequate amendments to see whether any of the states whose ratification of the amendments was necessary to the three-fourths majority had been coerced into ratifying them. Courts occasionally invoke the "political questions" doctrine to avoid massive intrusions into the operations of other branches of government. Legal formalists may decry such prudential abstentions, but Ackerman is not a formalist, and he never makes clear why he does not consider the recourse to "political questions" satisfactory.

He also does not explain why legislation enacted in periods of crisis, such as the Civil War and Reconstruction and the Great Depression, should be given greater respect than legislation enacted in calmer times. Perhaps the former is a more authentic expression of the "popular will," since more people are interested in politics in times of crisis than in

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quiet times; but that is like saying that a lynch mob has a livelier interest in the criminal justice system than the audience for Court TV. Ackerman inverts the usual view that detachment fosters deliberation. In truth, the policy output of periods of revolutionary excitement can be pretty awful. I would not say that of the New Deal as a whole, given the desperation out of which it grew—but many of its individual programs have long been recognized by economists and others as mistakes, and some of them have been dismantled in recent years without regret.

Of this Ackerman gives no hint. He is a New Deal nostalgist. He remarks, for example, that “the Holding Company Act [which separated gas and electric utilities] eliminated abusive concentrations of big capital.” Who believes that anymore? Who has a good word these days for the Glass-Steagall Act or the Robinson-Patman Act? Who mourns the repeal of the Civil Aeronautics Act? Who regrets the rollback of the Wagner Act, in calmer times, by the Taft-Hartley Act? Or the curbing of the New Deal agencies by the Administrative Procedure Act? And these examples notwithstanding, even if the popular will is in possession of some deep wisdom, or some other source of special legitimacy, why should it be permitted to project itself into the distant future without having to overcome the obstacles deliberately created by Article V to amending the Constitution?

If Ackerman’s proposal were adopted, it would be possible for the Supreme Court, upon a sufficient showing of public opinion but without the trouble of a formal amendment, to declare the Bill of Rights defunct. Ackerman flinches at this prospect, proposing that certain constitutional rights be “entrenched” by amendments that makes them unamendable. He does not explain on what principled basis the Court could be forbidden to declare the entrenching amendments superseded by extratextual amendment. Would the preamble of the entrenching amendments say, “These amendments are unamendable and this time we really mean it”? The problem with treating solemn written commitments (such as Article V) as mere scraps of paper is that it makes future commitments impossible. It debases language.

Ackerman would place a superhuman burden on the courts. It would be their task to identify constitutional “moments” and to determine which aspects of them are possessed of constitutional dignity. Indeed, since Ackerman is the only person to have identified these moments, he is the only person in the United

States fully qualified to sit on the Supreme Court. And his proposal would place a heavy burden on critics of the Court, too. The conformity of a judicial decision to the text or the history or the purpose of particular constitutional provisions, or to past decisions interpreting those provisions, or to sensible public policy, or to other values, would be irrelevant to an evaluation of the decision’s soundness. The only relevant conformity would be to the *Geist* of a past *Zeit*. (Ackerman does not speak of the *Zeitgeist*. His favorite word is “bandwagon.” For Ackerman, constitutional law is the study of bandwagon effects.) He alone would be able to grade the Supreme Court’s performance in identifying those effects. We would have a one-man Court and a one-man academy, and they would be the same man.

Worse, some of the most significant decisions of the Supreme Court cannot be explained in Ackerman’s terms. In cases such as the infamous *Plessy v. Ferguson*, the Court refused to recognize liberty of contract; this shows, contrary to Ackerman’s argument, that the Court was not enforcing some extratextual Reconstruction amendment that guaranteed such liberty against curtailment by the states. Indeed, the Court left Jim Crow, an affront to federal power, severely alone during the entire period of the “Reconstruction Constitution” that in Ackerman’s view decisively strengthened federal power over the states. And cases such as *Brown* and *Griswold* cannot be attributed to the New Deal “amendments,” since the New Deal was not interested in public school education or sexual liberty.

Ackerman’s interpretation of the Bork nomination as an effort to repeal the New Deal “amendments” is equally fantastic. Had Reagan been able to fill the Supreme Court with Borks and Scalias, it is likely that *Roe v. Wade* would have been overruled, and affirmative action by public bodies declared unconstitutional, and prayer allowed in public schools, and the constitutional rights of criminal defendants curtailed, and the power of the federal government over the states slightly reduced. Only the last item on this agenda would have brushed up against New Deal legislation, and only lightly. Indeed, the net effect of the overrulings by a Bork-Scalia Court would be to return constitutional law to where it was when Roosevelt died! Neither Bork nor Scalia believes that *Lochner*, *Adkins*, or any of the other “Reconstruction amendment” cases were correctly decided. Neither of them believes in constitutionalizing economic rights in the

manner of Richard Epstein, who believes that *Lochner* was correctly decided and that much of the New Deal was unconstitutional. Neither the SEC, nor the NLRB, nor any of the rest of the FDR alphabet soup that Ackerman so prizes, would have been endangered if Reagan had enjoyed nine vacancies to fill and a Republican Senate to confirm all his candidates.

In this book, Ackerman is primarily concerned with establishing the similarity of the three constitutional moments that he has identified (the original Constitution-making, Reconstruction, and the New Deal), and their dissimilarity to the failed fourth moment (Reagan and Gingrich). The original Constitution was adopted “illegally.” The Articles of Confederation had specified that they could be changed only by agreement of all the states, but the Constitution declared that it would be in effect as soon as two-thirds of the states ratified it. What is more, owing to the restricted franchise of the day, only a minority of competent adults participated either in the selection of the delegates to the constitutional convention or in the ratification of the Constitution proposed by it. Yet nobody questions the legality of the Constitution. The Reconstruction amendments were also adopted irregularly, by coercion of the Southern states, but nobody questions their validity. (I mean nobody who counts.) If the irregularity that afflicts either the creation of the original Constitution or the creation of the Reconstruction amendments is the same sort of thing as, or at least no worse than, the textual bodilessness of the New Deal amendments, then those amendments are just as valid.

These exercises in historical analogy carry Ackerman deep into the archives, where I cannot follow him. Like him, I am not a historian. The body of primary and secondary materials relevant to an understanding of the three historical periods that Ackerman studies is vast, and only a historian can evaluate his selections and interpretations. No one will deny the ingenuity of some of the parallels that he draws, or the clarity with which the entire structure is articulated. Ackerman matches the Reconstruction Act of 1867, which he treats as having amended Article V of the Constitution by conditioning the readmission of the Southern states’ Senators and Congressmen to Congress upon those states’ voting to ratify the Fourteenth Amendment, with Article VII of the Constitution, which had diluted the unanimity requirement of the Articles of Confederation. He matches the radical Republicans who controlled Congress during

Reconstruction to Franklin Roosevelt, and he matches Andrew Johnson—the border-state president who was Lincoln's successor and opposed the radical Republicans—to the Supreme Court that tried (at first with some success) to thwart the New Deal.

For Ackerman, the fact that these powerful efforts to prevent the “enactment” of the irregular amendments (coerced, in the case of the Reconstruction amendments, and nontextual, in the case of the New Deal amendments) failed—that the current of reform was able to overcome such resistance—proves the strength of the popular will, and thus verifies the existence of true constitutional moments. More, it shows that the failure of regular enactment in the Reconstruction and New Deal eras was a trivial detail, on a par with a misspelling in a judicial commission. Had President Johnson not flinched during the trial of his impeachment, he would have been convicted, removed from office, and replaced by a radical; if Secretary of State Seward had refused to proclaim the adoption of the Fourteenth Amendment, Congress would have overridden him; if the Supreme Court in 1937 had not abandoned its opposition to the New Deal, Roosevelt's Court-packing plan would have been enacted.

I don't know whether these or any of the other counterfactual claims (Ackerman calls them “alternative histories”) with which this book is studded are true. That, again, is for historians to say, if they can. Perhaps they will say that it is impossible to speculate responsibly about Lincoln surviving his second term or Roosevelt failing to survive his first term, enabling John Nance Garner to become President and play Andrew Johnson's role in resisting a radical Congress. In any event, the statute under which Seward acted, requiring that the Secretary of State certify as valid a constitutional amendment when it has been ratified by the requisite number of states, begins to be a rather appealing formality.

But Ackerman calls it a “legalistic piece of paper.” The logic of Ackerman's approach is this: if a court were confident that a certain law would be passed by Congress and signed by the President, but for some irrelevant reason (maybe just an oversight by the clerical staff in one of the houses of Congress, or a filibuster on an unrelated issue) the law was not enacted, the court could go ahead and enforce it as if it had been enacted. Formalists who read this book may come away with their faith in the social value of legalistic pieces of paper strengthened.

No Port Now

In the ancient struggle of breath against death, one more sleep given.
We took an offer on the house.
In the sum of the parts
where are the parts?
Silently (there) leaves and windows wait.
Our empty clothesline cuts the sloping night.
And making their lament for a lost apparel of celestial light
angels and detritus call out as they flow past our still latched gate.

ANNE CARSON

Historians may question Ackerman's effort to identify three constitutional “moments,” these three peaks in American history, and to consign the rest of our past to the plains. Other candidates for moments of heightened popular attention to political matters present themselves. For a start, there was the Revolutionary War itself, which produced the Declaration of Independence (which Lincoln always treated as one of the founding documents of the American “Constitution”) and the Articles of Confederation; and there were the first few decades under the Constitution, with the tug of war between John Marshall and Thomas Jefferson over whether the national government would be effective; and there was the presidency of Andrew Jackson, which inaugurated populist democracy and the party system; and there was the Progressive era, embracing the Presidencies of Theodore Roosevelt, Taft, and Wilson, which gave us trust-busting, the Federal Reserve Act, the Clayton and Federal Trade Commission Acts, the independent civil service, and the idea of public administration by disinterested experts. Ackerman must do more to justify his periodization of American history.

Ackerman's touch in dealing with issues of law is not always sure. His worst mistake is in supposing that the *Erie* decision of 1938—which required federal courts in cases where the only basis of federal jurisdiction is that the parties are citizens of different states to apply state common law, rather than common law made up by federal courts—was necessary to vindicate the supremacy of legislatures in making policy. Under the pre-*Erie* regime, federal courts in these cases deferred to state statutes; it was only when there was no statute that the federal court applied its own common law principles rather than those of one of the states concerned in the controversy. Ackerman's mistake comes from being too eager to shoehorn every important judicial decision of the 1930s

into his analytical framework, in which the 1930s stand for a radical break with the conservative thinking of the common law era.

The book ends very curiously, with a radical proposal for amending Article V—extraconstitutionally, of course. Another proposal is tossed off, but not developed: that confirmation of a nominee to the Supreme Court require a two-thirds vote. The goal is to prevent a president—read: a Reagan-like president—from making a potentially “transformative” appointment—read: a Bork-like appointment—without strong congressional support. Ackerman's radical proposal, the one that he does develop at length, is to empower the president, upon being reelected, to propose constitutional amendments that would be placed on the ballot at the next two presidential elections and, if passed, become formal amendments to the Constitution.

In other words, a president popular enough to be reelected would be empowered to sponsor two referenda four years apart, and a concordance in the results of the referenda would make the proposals part of the Constitution. And what would be the vehicle for making the approach itself a part of the Constitution? A statute that would provide that it take effect if proposed by a second-term president and passed by a two-thirds majority of Congress and then supported by the voters in the next two presidential elections. Like the original Constitution, then, the statute would prescribe its own mode of becoming an enactment that would have the force of a constitutional amendment.

I am at a loss to understand the purpose of this proposal. It does not answer to the historical events out of which it issues. It does not take care of the irregular Founding; and as for Reconstruction, the proposal for constitutional amendments could not have been made until 1872, when Grant was reelected.

or adopted until 1880—by which time Reconstruction was over and no Reconstruction amendment, in all likelihood, could have passed. Similarly, the New Deal amendments could not have been made until 1936, when Roosevelt was reelected, or adopted until 1944, when World War II was in full flow and the New Deal virtually forgotten.

Ackerman's project is what is called, in the language of academic criticism, a *tour de force*. That is to say, it is ingenious and unpersuasive. It also has the aspect of an obsession, and it is argued in a cheeky style that will rub the fur of some of his readers the wrong way. It has a kind of lightheadedness, lacking as it does any grounding in considerations of social need or political feasibility. For surely there is no felt need either

to amend Article V, constitutionally or extraconstitutionally, or to invite judges to discover constitutional amendments written in invisible ink. Ackerman wisely forswears any prophecy of what the next national crisis will be. (A "moment" is due right about now, if one considers that the Founding period was the 1780s, the Reconstruction period the late 1860s and 1870s, and the New Deal period the 1930s.) Yet history suggests that American institutions are sufficiently flexible and resilient to cope with crises without smashing the constitutional framework.

RICHARD A. POSNER is Chief Judge of the U.S. Court of Appeals for the Seventh Circuit and a senior lecturer at the University of Chicago Law School.

Of the remainder, three should not be in the book. Smollett's *The Adventures of Roderick Random* (1748) is not a gay novel. If you handed it with sexual intent to a man in a gay bar, you would do well to say: "Read this and eventually you will come upon a minor, indeed minimal, character called Earl Strutwell, a dissolute nobleman who is gay and a liar and a thief, and gives our hero a copy of Petronius's *Satyricon*." John Cleland's *Memoirs of a Woman of Pleasure* (1749) is not a gay work, but it gets excerpted by Mitchell and Leavitt only because of an episode in which Cleland's Fanny sees two boys having sex. Henry James's story "Collaboration" (1892) also should not be in the anthology. It is not about homosexuals. It is one of several stories—including "The Lesson of the Master," "The Figure in the Carpet," "The Author of Beltraffio," and "The Next Time"—about the compulsions of art, the conditions under which artists worked at the end of the nineteenth century, the sacrifices they were prepared to make. The motif common to them is what Vendemer says to Madame de Brindes in "Collaboration": "Ah, madame, vous savez que pour moi il n'y a que l'art!"

The question of the quality of these writings is hard to raise. For Mitchell and Leavitt are not interested in that issue. They claim that *Maurice* is "the first, and perhaps still greatest, of all homosexual novels." If they are right, so much the worse for homosexual fiction. The only excerpts worth reading in the anthology are by Melville, Pater, James, Cather, Lawrence, and Forster. The other items are indistinguishably awful. One of the self-inflicted penalties incurred by gay readers in the later years of the nineteenth century, apparently, was the obligation to read some of the worst prose in the English language. "In the gloom you are my light; in the cold you are my fire; the frozen wastes of the Pole would be a Garden of Eden for me, if you were there," the narrator says to Teleny. And receives the answer: "My body hungereth for thee, soul of my soul, life of my life." The most tedious excerpt is the longest, Alan Dale's *A Marriage below Zero* (1889), which consumes one quarter of the book. I hope that any self-respecting gay reader, offered Dale's book as an inducement to sex, would have the taste to laugh.

Gregory Woods is the author of a study of D.H. Lawrence, Hart Crane, W.H. Auden, Allen Ginsberg, Wilfred Owen, Thom Gunn, and other poets. His new book is a much wider survey course of gay literature. Or what he declares to be gay literature. Woods has evidently written the book for readers

The Book of Love

BY DENIS DONOGHUE

Pages Passed from Hand to Hand: The Hidden Tradition of Homosexual Literature in English from 1748 to 1914 edited by Mark Mitchell and David Leavitt

(Houghton Mifflin, 458 pp., \$30)

A History of Gay Literature: The Male Tradition by Gregory Woods

(Yale University Press, 456 pp., \$39.95)

The transmission of gay books from man to man for purposes of seduction is one of the quainter uses of literacy. Occasionally the matter becomes news. Jeremy Thorpe was a case in point. He was gay and the leader of the Liberal Party in Britain. One evening he picked up a drifter, brought him home, provided dinner, showed him to the guest room, and an hour or so later presented himself there, clad in a dressing gown and bearing a copy of James Baldwin's *Giovanni's Room*. Presumably the message that Thorpe delivered by means of the book was not "I'm gay and I hope you are, too," but "please share with me the images and the scenes in this book, and then let us fulfill their enchanting logic by having sex." Over a few months the relationship between Thorpe and his partner went sour; extraneous things happened, someone shot a

dog, gossip was leaked to the media, and Thorpe had to resign his leadership of the Party and leave public life.

This was a weightier event than any recalled in Mark Mitchell's and David Leavitt's book, but the use of a book for a sexual purpose is the main motif of the anthology. Giving a list of suggestive books and themes, the editors glowingly report: "And the works in which such content lay—nascent, unbudded—these readers passed on to one another. Word-of-mouth dissemination: *read this*." The study of pre-1914 homosexual literature, we hear, "is still a matter of pages passed from hand to hand." But not necessarily the pages excerpted in this anthology. There are 29 passages, but only two of them—from the anonymous *Teleny*: or *The Reverse of the Medal* and Forster's *Maurice*—are shown to have been passed along as if in brown paper wrapping, gay friend to gay friend.

who, in addition to being gay, are docile enough to accept his assumptions without irony or question. A short list of his axioms would include the following. The "male tradition" of gay literature consists of books in which gay men write about man-man sexual experiences or man-boy sexual experiences, real or imagined, and books written by straight authors that contain at least one gay character. These axioms coincide with those of Mitchell and Leavitt. If you take them seriously, you can bring into a large gay bar writers as different as Homer, Plato, Theocritus, Horace, Catullus, Tibullus, Martial, Juvenal, Petronius, Virgil, Ovid, Dante, Boccaccio, Chaucer, Marlowe, Spenser, Shakespeare, Barnfield, Bacon, Otway, Milton, Rochester, Sade, Beckford, Shelley, Tennyson, Balzac, Dickens, Arnold, Pater, Whitman, Wilde, Proust, Cavafy, Gide, Countee Cullen, T.S. Eliot, Angus Wilson, Dashiell Hammett, and Barbara Cartland.

Like Mitchell and Leavitt, Woods is indifferent to critical discrimination. He doesn't regard literary merit as a question to be addressed, so he includes Desmond Hogan but not Paul Bowles or Reynolds Price; Forster's *Maurice* but not *Howards End* or *A Passage to India*. He keeps his readers gratified with social and political commonplaces. They hear of "the place in which most of us are forced to lead our daily lives: the wasteland of heterosexual self-esteem." More surprisingly, Woods posits "correspondences between heterosexuality and science, homosexuality and poetry," but this idea is too daft to keep anyone awake for long. Meanwhile we meet the old familiar enemy, bourgeois liberalism, predictably stereotyped as "the straight paterfamilias, that master of mortgages." A sudden reference to "the dreary Catholic poet Charles Williams" makes me wonder: dreary because Catholic? Yes, of course.

I'll say this for Charles Williams: he was a far better writer than Gregory Woods. I don't recall any sentences in Williams's books as ludicrous as these in *A History of Gay Literature*: "In other words, Barnfield is a useful poet to have around when you are trying to bolster up Shakespeare's position as heavyweight champion of the literary world." "The bottom line is always the sexual orientation of the so-called Bard." "The war was also, as it were, the primary cause of T.S. Eliot's *The Waste Land*." "Sodom... adds flesh to our overall conception of the libertine world-view." "Gide's novel [*Les Faux-Monnayeurs*] is dripping with adolescent testosterone...." "[Langston] Hughes is particularly good on sailors." And there is this masterpiece:

There are times when one feels an overwhelming urge to expand the boundaries of what is meant when one speaks of "gay literature," or the "gay novel," at least as far as to include not only representations of queer people by writers of whichever sexual orientation, but also characters who are merely regarded by others as being, even slightly, "strange" in ways related if not to sexuality itself, then to gender identity or marital status.

One would suggest to Woods that he yield to such an overwhelming urge, lest he do himself an injury.

This *History of Gay Literature* is that urge, yielded to. Woods's procedure is to claim for homosexuality feelings and

sentiments that don't seem to call for such designation. If I am friends with a man, I must be a closet homosexual and feel man-man love for him. The angels in Milton's *Paradise Lost* are gay, apparently. And so, too, is Modernism: "Homosexuality is in essence a construct of the (late) nineteenth and twentieth centuries; as an essence it is just as distinctively a characteristic of modernism as are atonalism in music, Cubism in painting, or interior monologue in the novel."

Woods's scholarship is rough trade. I agree that one of Dickens's paragraphs in Chapter 10 of *Oliver Twist* has its punning force:



NATIONAL POETRY MONTH APRIL 1998

A little Madness
in the Spring
Is wholesome
even for the King

—Emily Dickinson

From *The Poems of Emily Dickinson*.
Thomas H. Johnson, Ed., Cambridge, Mass.:
The Belknap Press of Harvard University Press

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The three boys sallied out, the Dodger with his coat-sleeves tucked up, and his hat cocked, as usual; Master Bates sauntering along with his hands in his pockets; and Oliver between them, wondering where they were going, and what branch of manufacture he would be instructed in, first.

But Woods is in error when he says that Dickens "just once in the novel" refers to Charley Bates as "Master Bates." He often calls him Master Bates. Woods comments on Charley sauntering along with his hands in his pockets:

In this single phrase, Dickens conjures up not only that quintessentially Victorian bugbear "self-abuse," but also the even more unthinkable prospect of mutual masturbation. Charley Bates' jaunty gait, with that suspiciously casual apposition of hands and loins, hints subtly at potential moral decline of a sort which Victorian sexual mythology associated so closely with both physical weakness and the descent into imbecility.

If I were a professional pick-pocket, like Charley, I, too, would have my hands in my pockets whenever they weren't darting into someone else's. I would want to protect my winnings from other rascals of similar craft. If Woods thought that I was masturbating, I would have to put up with his view. Mutual masturbation? Dickens's paragraph doesn't refer to the Dodger's hands or Oliver's. But Woods isn't done with the theme: "Since it involves a male hand on a penis, male masturbation is, in a particular sense, already a homosexual act, even if the masturbator is fantasizing about women at the time."

Then we have Marlowe and *Dr. Faustus*. Hugh Kenner has argued convincingly that the English language defined itself by its service to the conditions of the Elizabethan theater. When Marlowe's Dr. Faustus conjures Helen of Troy—"Was this the face that launched a thousand ships/And burned the topless towers of Ilium?"—and the Elizabethan audience sees only a painted boy walking across the stage, the language forces us to dream away from the visible image. Woods will have nothing of this. "It is the boy in 'Helen' that Dr. Faustus desires": "Boyishness signifies the sins of the flesh, since to Marlowe this is what boys meant. It is as natural to Faustus to lust after this 'Helen' as it might have been to Marlowe himself."

And now we come to T.S. Eliot. Woods accepts, and has an interest in furthering, the old canard, first elaborated by John Peter in 1952, that *The Waste Land* is a homosexual poem. Supposedly, Eliot fell irretrievably in love with Jean Verdenal, a medical student whom he met in Paris in the winter of 1910. who was

killed in action in the Dardanelles on May 2, 1915. The "I" of the poem, despite every reasonable objection to this interpretation, is the biographically ascertained T.S.E. The poem is an elegy, expressing passion from which "the protagonist" prays to be released. As evidence for this interpretation, Woods quotes—as John Peter did—the passage in *The Criterion* in which Eliot wrote of the Paris he knew in 1910-11:

I am willing to admit that my own retrospect is touched by a sentimental sunset, the memory of a friend coming across the Luxembourg Gardens in the late afternoon, waving a branch of lilac, a friend who was later (so far as I could find out) to be mixed with the mud of Gallipoli.

To advance the homosexual reading, Woods calls Eliot's friend "the lilac boy" and identifies this figure as—nudge, nudge, wink, wink—"the hyacinth girl" in *The Waste Land*. The entire passage in Woods's book is parasitic on Peter's essay. This is a persistent device in *A History of Gay Literature*, by which Woods takes

Roland Barthes's Proust as Proust, Ruth Tiefenbrun's Kafka as Kafka, Michael Moon's Whitman as Whitman.

There are two main objections to Woods's book. The first is that he writes of gay life as if it consisted of nothing but sex. Gay men, so far as he is aware, do nothing but fuck. They have no other interest in life; they are not concerned with friendship, family, career, money, power, the weather. You would never divine from this book that there are gay couples as domestically sedate as any legally married couples, and just as interested as anyone else in mortgage rates. The second is that Woods deals only with the genteel tradition in gay literature. You would not discover from this history of the subject that there is a violent, sadistic underworld in gay life. Woods is probably a nice man, but he is dreamy and naïve in relation to the forms of literature that he has chosen to present.

DENIS DONOGHUE is the author of *Walter Pater: Lover of Strange Souls* (Knopf).

Big

BY DAVID A. BELL

Victor Hugo by Graham Robb

(Norton, 682 pp., \$39.95)

Every few generations, a writer comes along whom the French decide to anoint as their Literary Genius and National Conscience. There are a number of requirements for the position. The god must be enormously prolific, ready to whip off a poem, a newspaper article, or at the very least an aphorism at a moment's notice. He (no women need apply) must have strong, though not necessarily consistent, political opinions. He must have a busy and irregular sex life, the better to give pleasurable outrage to the *grandes dames* of the Faubourg Saint-Germain. He must have aristocratic pretensions (or the twentieth-century equivalent, an education at one of France's ultra-elite *grandes écoles*). He must have an extremely towering ego. Oh yes, he must also be a great writer, though nobody expects consistency on this score either.

In the eighteenth century, the demiurge in question was, of course, Voltaire. In our own diminished century, the closest the French have come to casting the

role successfully was Sartre. It was the nineteenth century that fixed upon the most perfect example of all, when it culturally beatified Victor Hugo.

Of Hugo's lack of a writer's block, there can be no doubt. *Les Misérables*, for example, is 3,500-odd pages long. Graham Robb nicely observes that the book changes your life in part because you spend so much of your life reading it. As for the other requirements, Hugo began his career as a fiery defender of the divine-right monarchy and finished it (he died in 1885) as a thundering prophet of socialism and the secular republic. His sex life makes ordinary libertinism look monastic. He belonged to both the Bonapartist and Orleanist nobilities. He wished to found a new religion and he compared himself to Jesus. Most amazingly of all, he was a great writer.

These various attributes make Hugo an irresistible subject for biographers, but also an unusually challenging one. In the first place, he demands stamina. Merely reading his collected works took Robb

four years. Reading everything that contemporaries wrote about him, to say nothing of subsequent literary criticism, would be wholly impossible. More importantly, a biographer cannot write about Hugo the man and Hugo the writer without confronting something utterly inseparable from them: Hugo the public phenomenon. From the early admirer who wanted his tombstone to read "Here Lies One who Believed in Victor Hugo," to the later one who wanted Paris renamed Hugopolis, to the Vietnamese Buddhists who made him literally a saint, Victor Hugo was the center of a cult.

And, more to the point, he reveled in it. His apartment on the Place des Vosges in the 1840s, bedecked with pieces of armor and medieval tapestries, was less a private dwelling than a bizarre public showcase for an endless stream of visitors. (Dickens keenly described it as "a most extraordinary place, looking like an old curiosity shop, or the Property room of some gloomy, vast old Theatre.") His diaries can read like dispatches from the farthest reaches of clinical narcissism: "4 October: The popular photograph of myself is being sold in the streets. I bought one"; "20 October: The papers report that the Victor Hugo balloon has landed in Belgium"; "1 December: 'On the Boulevard Victor-Hugo a Victor Hugo orphanage is being founded....'"

In 1878, Hugo wrote the following words about Voltaire, fully intending them to apply to himself as well: "He was more than a man, he was a century. He had exercised a function and fulfilled a mission." The first sentence is an exaggeration, but the second is not; and for this reason a biography of Hugo must also be, at least in part, a history of the culture which defined that function and mission. It is not an easy task, and Robb has not wholly succeeded at it.

Robb has certainly brought the requisite stamina to the job. He has read through the Hugo oeuvre, from the sublimities of *Tristesse d'Olympio* and *Les Misérables* to the awfulness of the early gothic novel *Hans of Iceland*, which featured a demon dwarf, bodies torn to shreds by the dozen, and a hero named Thorvick—Victor backwards. (A contemporary British reviewer called it "the most extraordinary and ultra horrible production of a disordered imagination that has ever frozen the blood and blanched the cheeks of romance readers.") More importantly, Robb has read Hugo's writings with the sort of care that allows him constantly to draw previously unseen connections. When he turns to the way in which Hugo described his daughter and son-in-law's tragic drowning, for instance, Robb immediately recalls "the consum-

mation-in-death at the end of *Notre-Dame de Paris*, thirteen years before: "Two skeletons were found, locked in a curious embrace. One of the two skeletons—the skeleton of a woman—still wore a few scraps of dress of a material which had once been white."

Robb also manages to tell the story of Hugo's life with the sort of wit and lightness of touch that his subject singularly lacked: "Hugo could talk for hours about concision"; "The young Duchess ... knew his poems by heart, which was more than could be said for Hugo, who once complimented his daughter on a poem he had written himself"; "A statistical analysis shows that from 1847 to 1851, he had sex with more women than he wrote poems." To late-twentieth-century sensibilities, Hugo's olympic-scale pomposity presents an almost irresistible target, and it is to Robb's credit that he indulges in these pleasurable pin-pricks while still taking Hugo and his work seriously. Only occasionally do the worst aspects of Hugo's own prose appear to have infected his biographer's, as in this truly dreadful analysis of some late verse: "Its main verb straddles the caesura like a soul yearning to cross the great divide."

Thanks to his hard work and his wit, Robb manages to make the well-known story of Hugo's life fresh and entertain-

ing. First, there was the unusual childhood as the son of one of Napoleon's generals. Born in eastern France in 1802, Hugo lived for a time in Spain, where, if the First Empire had survived, he would have grown up to become Count of Sigüenza at the Bonapartist court of Madrid. ("My works would have been written in a language which is not widely spoken and would thus have had little effect.") Instead the First Empire crumbled, and the adolescent Hugo found himself living in genteel poverty in Paris. But obscurity did not last long, thanks to a facility for verse so remarkable that poems formed themselves in his mind at all hours, even during sleep. "Hugo actually complained about this involuntary activity as a nuisance," Robb writes, "as if it had been a speech impediment or a tic." By age 20 Hugo had already won important literary prizes, gained powerful patrons, and become a leading figure in the nascent Romantic movement.

From then on, his life was a constant performance, acted out before an ever-swelling audience. At 22, he served as official poet at the coronation of the reactionary Charles X. Soon afterwards, he published his *Préface de Cromwell*, designed to serve as the official manifesto of French Romanticism. There followed the famous "battle" of *Hernani*, Hugo's

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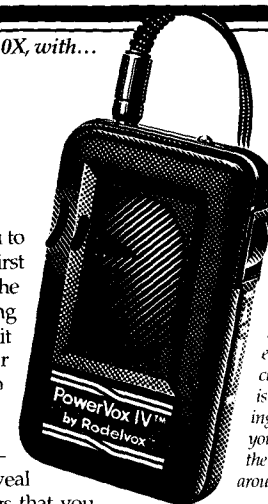
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play that, from its very first line (with its famous enjambment), deliberately violated the rigid rules of classical French versification. The work became a rallying cry for a generation, provoking street battles and even duels. Robb shows just how carefully Hugo and his literary allies orchestrated the public confrontation, and crafted his public legend.

But the legend grew very nicely on its own. In following years, rumors circulated that Hugo could eat half an ox at a single sitting, go without food for three days, see and hear more keenly than mere mortals. "According to the authoritative testimony of Hugo's barber, his bristles blunted the razor three times as quickly as a normal beard." Embarrassingly adoring letters arrived by every post. Fed by this sort of adulation, the poet's ambition quickly vaulted beyond mere literary revolutions. In his poetry he conflated his own life story with that of the human race. As Robb rightly remarks, he had "begun to think of himself as a Messiah."

While not attempting a sustained psychoanalysis, Robb does suggest plausibly that Hugo's egomania verged on mental illness. Insanity ultimately claimed his brother Eugène and his daughter Adèle (she was the subject of François Truffaut's film *Adèle H.*). But in Hugo's case, his admirers accepted any eccentricity as a manifestation of Genius, while the manner in which some expressed their Hugo-worship ensured that none of his desires went frustrated. In the 1820s, he had put his young family on display as an example of domestic bliss. Ten years later, he had acquired an "official" mistress and embarked on a dizzying odyssey of sexual conquest, the details of which he meticulously recorded in secret but none-too-subtle code in his notebooks. ("The word 'spontinian' has been interpreted, inexplicably, as an allusion to the composer, Spontini," Robb writes drily. "Hugo's later notes show it was his code word for ejaculation.")

The remarkable thing is that Hugo's talent was not crushed under the weight of his swollen self, or swamped by the adulation, or left to wither as he indulged himself with mistresses and "live pornography." Quite the contrary. It flowered. In the 1830s he produced his greatest Romantic poetry, and also his novel *Notre Dame de Paris*, which provided a brilliant vision of a gothic and grotesque fifteenth-century Paris, and bequeathed to literature the world's most famous hunchback, Quasimodo. In the 1840s came more great poetry, and also the beginnings of *Les Misérables*. Unsurprisingly, these achievements inflated the Hugo legend to new dimensions. By 1848, after King

Louis-Philippe, he was the most famous Frenchman alive, a figure whose recommendation could transform obscure villages into major attractions for the nascent tourist industry, and whose utterances carried political as well as literary weight.

Politics, in fact, increasingly dominated Hugo's life, and Robb quite properly makes the Revolution of 1848 the dramatic center of his story. By that date, Hugo had long abandoned his early Catholic legitimism in favor of the solid bourgeois moderation of the July Monarchy. A friendship with Louis-Philippe, that most bourgeois of kings, earned him a peerage, and also high-placed protection when an affair with an artist's wife threatened to land him in prison. (The king bought the cuckold's silence with a commission, and, "a few months later," Robb quips, "the Château de Versailles acquired some unusually mediocre frescoes.") When the Revolution broke out, however, Hugo hastily rallied to the new Second Republic, and won election to parliament.

The decisive moment came in late June 1848, when the people of Paris rose in revolt against a newly elected Assembly more responsive to conservative peasants than to poor workers. Hugo found himself face-to-face with the Parisian barricades, and Robb evokes the encounter by quoting Hugo's own unforgettable description of a barricade in *Les Misérables*:

It was a collaboration of the paving-stone, the rubble-stone, the beam, the iron bar, the rag, the shattered window, the broken chair, the cabbage-stalk. . . . It was enormous and living, spitting thunder and lightning as if from the back of an electric beast. The spirit of revolution covered that peak with its cloud in which the voice of the People rumbled like the voice of God. . . . It was a pile of rubbish and it was Mount Sinai.

Still, as Robb strikingly points out, the Hugo of 1848 actually saw the barricades from the side of the forces that suppressed the revolt. Indeed, he personally led a detachment of Republican Guards against the rebels.

It was a turning point. The bloody, ruthless suppression of the workers left Hugo at an uncharacteristic loss for words, one that speaks of a deep personal crisis, perhaps even of deep guilt. Whatever the case, in the next years he finally stopped trimming his politics to fit the regime, and abandoned the pose of a great lord for that of a radical prophet. When Louis-Napoleon Bonaparte assumed the presidency of a France exhausted by revolution, Hugo initially flirted with him, as he had done with Louis-Philippe. As Bonaparte steadily sup-

pressed freedoms in the name of order, however, Hugo slid into opposition; and the president's coup d'état against his own parliament in 1851 led the poet to flee, first to Belgium, then the Channel Islands. The Genius was now the Exile, flinging anathemas against *Napoleon the Little* (his book of the title did much to discredit and ridicule the regime), holding court for the usual procession of adoring visitors, and finishing *Les Misérables*, which finally appeared in 1862. The book garnered one of the most rapturous popular receptions ever granted a novel. As Robb notes, it was one of the last great masterpieces of Western literature wholly accessible to a popular readership.

In his exile of nearly two decades, Hugo grew only more eccentric. He communed with spirits, and gradually he acquired an impressive collection of otherworldly interlocutors. The list, Robb notes, included Cain, Jacob, Moses, Isaiah, Sappho, Socrates, Jesus, Judas, Mohammed, Joan of Arc, Luther, Galileo, Molière, the Marquis de Sade, Mozart, Walter Scott, Androcles's lion, Balaam's ass, a comet, and an inhabitant of Jupiter called Tyatafia. In conversation with Hugo, Shakespeare admitted that English was an inferior language to French.

And yet Hugo's stature continued to grow. Worshipful letters arrived in Guernsey for him by the boatful, some addressed only to "Victor Hugo, The Ocean." The last years of his life represented an apotheosis that eclipsed even that accorded to Voltaire a century before. As the farcical reign of Napoleon the Little came to a tragic end in the Franco-Prussian war and the Paris Commune, Hugo staged a triumphant return to French soil, and became a sort of unofficial royalty for the new Third Republic. Twentieth-century writers dare not even dream of the sort of celebrity that this writer enjoyed, lest they curl up in despair. The memorization of his poems became mandatory in the schools. The state renamed his street Avenue Victor-Hugo. His every utterance received prominent coverage in the newspapers. He was, Robb says, "the most famous man on earth." His funeral in 1885 was one of the great civic festivals of the Third Republic, with up to two million mourners flooding into Paris as the pallbearers laid him to rest in the Pantheon, near the tombs of Voltaire and Rousseau. (That is to say, it was bigger than Diana's.)

Robb tells this amazing story with great verve, some fascinating new information (particularly on Hugo's role in 1848), and many acerbic swipes at previous biographers, one of whom he does not even deign to name, merely referring to "the last life of Victor Hugo in English." He

wisely avoids providing plot summaries of the novels. Actually, he spends remarkably little time on the works at all. The occasional quotations from letters and novels give a good sense of Hugo's prose style, but Robb does not even try to evoke the poetry, frankly admitting the impossibility of doing so in an English-language book. It is a pity, for the unsuspecting reader will imagine a Hugo who spoke mostly in basso profundo, in majestic declamations that verged on bombast. They will not easily guess the lyrical delicacies of which the poet was capable.

While this particular unevenness is probably unavoidable, Robb's more formal excursions into literary analysis go wrong in a different way, and reflect a more serious problem with his book. Consider the following judgments. Hugo's early travel book about the Rhine is nothing less than an early "roman-fleuve." A passage describing a railroad makes one think "a theory of relativity was just around the corner." Hugo's letters "are filled with what looks like Surrealist imagery." The last novels, and particularly the bizarre *L'Homme Qui Rit*, "stand like weird towers on the frontier of Romanticism and Modernism."

Each of those judgments is certainly defensible, but together they produce the wrong impression. Victor Hugo's anticipations of modernism are the least interesting thing about him. He was emphatically not an avant-garde artist. Indeed, he did not want to get too far ahead of his day. Even his early literary rebelliousness was carefully calculated, involved the embrace of a movement that had swept England and Germany many years before and in France faced little serious competition from a moribund neoclassicism. When Hugo remarked that "the poet exists for the people," he meant it. He mostly gave his public what they wanted, not what he thought that they should want. The "magnificent delusions" of the strange late novels were what prompted Robb to write his biography in the first place, and clearly he prefers them to most of the better-known, less protomodernist works; but they represent the relatively rare moments when Hugo's manias started to bubble out of control, and his relationship with his public grew frayed.

Yet this relationship was everything to Hugo, and it largely determined the direction of his work. For what is a messiah without followers? Robb, unfortunately, while citing many examples of the public's adulation of Hugo, rarely gives the public itself serious attention. Above all, he generally fails to reflect on the ways in which France's military humiliation in 1815, and the ideological exhaus-

tion produced by an unending merry-go-round of regimes (15 or so of them between 1789 and 1870), might have led the French public to seek in literature something that it could not find in politics. The nineteenth century was the great era of the writer-politician in France: Hugo shared the stage with Chateaubriand, Lamartine, Tocqueville, and many others. Robb might profitably have compared Hugo's career to theirs.

Most strikingly, the cult of Victor Hugo eerily recalls the earlier cult of Napoleon, a fact that Robb notes in passing and then seems to forget. It is likely that Hugo's intense, visceral loathing of Napoleon III, "Napoleon the Little," stemmed not just from an admirable hatred of tyranny (compounded, perhaps, by guilt over the events of 1848), but also from a sense of jealousy and competition. Certainly his readers appreciated the comparison between Hugo's lonely vigils on Jersey and Guernsey and Napoleon I's exiles on the even lonelier islands of Elba and Saint Helena. "L'Expiation," Hugo's single best-known poem, which Robb barely mentions, is about Napoleon. In that corner of the national psyche where Americans keep "The Midnight Ride of Paul Revere," and the British keep "The Charge of the Light Brigade," the French still repeat its lines: "Waterloo! Waterloo! Waterloo! morne plaine...."

It may be that Hugo owed his station as France's Genius to this well-gratified Napoleon complex. His great works derive not just from enormous talent, but from the fact that he, more than any of his contemporaries, had the manic drive and the titanic arrogance to pose convincingly as a savior in a country that desperately needed one. The greater the need, the stronger was his response; and it is no coincidence that, in a career that spanned nearly 70 years, so much of his most enduring work stems from the decades that followed the crushing political disillusionments of 1832 (a year of unsuccessful insurrections against the July Monarchy) and 1851. The resounding moral truths of *Les Misérables* have a power independent of the circumstances of their composition, but they clearly spoke most powerfully and directly to the France in which a great outburst of revolutionary fervor had just fizzled into the crass and tyrannical regime of Napoleon the Little.

Victor Hugo was undoubtedly a little mad, as Robb suggests more than once, chronicling the family history, the sexual obsessions, the spiritualism, the prodigious versifying, the preternatural self-centeredness. But to seize upon madness as the key to Hugo's genius, as Robb

does, with his modernist preference for Hugo's maddest literary productions, is somewhat to miss the point. Victor Hugo was Victor Hugo not because he was mad, but because the public thought he was sane. Or rather, because the public happily joined him in his madness, finding in his art exactly what he found in it: a world much preferable to the complicated, frustrated, and disillusioned world before their eyes.

DAVID A. BELL teaches French history at Johns Hopkins University and is the author of *The National and the Sacred in France*, forthcoming from Harvard University Press.

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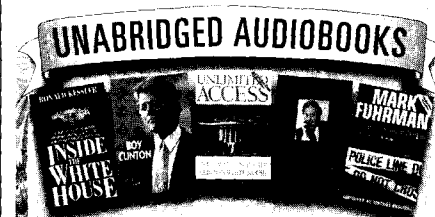
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CATSKILLS DIARIST

Klezmania

THE DRIVE UP FROM MANHATTAN'S West Side to Parkville, New York, takes little more than two hours by car. But, spiritually, the two places are worlds apart. I arrived on a Sunday to a scene of chaotic merriment: old friends reunited with shouts and hugs in the lobby of the Paramount Hotel, mothers and fathers called for children in Yiddish, new arrivals kvetched about the room sizes and bad kosher food, and, softly at first, the clarinets began to wail. KlezKamp 1997 had begun.

THE YIDDISH TERM "KLEZMER" derives from the biblical Hebrew *keli-zemer*, literally "instruments of song," and came to be used in Eastern Europe after the Middle Ages as a designation for a Jewish professional musician. Small groups of these klezmers (or klez-morim)—fiddlers and bassists, later joined by clarinetists, drummers, trombonists, and others—performed for both Jewish and Gentile audiences at a variety of ceremonies, parades, and fairs. Since instrumental music was banned on the Jewish Sabbath and most holidays by the rabbis, the musicians survived by carving out an indispensable role for themselves at Jewish wedding celebrations that sometimes stretched over weeks. Just as today's wedding bands pump out "Hava Nagila" and "The Electric Slide" back-to-back, klezmers in Eastern Europe played whatever their audiences wanted to hear—whether Polish, Hungarian, and Romanian folk tunes, or the waltzes, quadrilles, mazurkas, and other cosmopolitan dances that captivated Europe during the nineteenth century. Their specialty, however, was a core Jewish musical repertoire of driving *freylekhs*, *sher*, and *khosidl*, tunes built on the melodic scales of Hassidic and cantorial music set to common Eastern European rhythms.

FOUNDED TWELVE YEARS AGO BY an assortment of young folk music revivalists and Yiddish hippies, KlezKamp is now the hottest event in the burgeoning Yiddish cultural scene. Every year it draws upward of 450 professional and amateur musicians, artists, academics, and Yiddishists for six days of music workshops, classes on everything from Yiddish theater to Yiddish cooking, all-

night dancing, and nonstop schmoozing. This surprisingly diverse crowd—non-Jewish musicians from Europe, old-time Jewish labor-movement veterans, avant-garde theater artists, high school-aged enthusiasts, housewives (and husbands) from Long Island, multigenerational Yiddishist families, and, of course, the top klezmer musicians from all over the world—chases after every scrap of Yiddish song, dance, and story they can find during the course of the week. Impromptu jam sessions pop up in every available space including hotel bedrooms and corridors. Meanwhile, in quieter corners, native Yiddish speakers patiently converse with eager new students.

KLEZKAMP'S SUCCESS IS more remarkable considering klezmer music's dramatic decline over this past century. When masses of Eastern European Jews poured into American cities a century ago, klezmer should have thrived. But, though they had passed on music as a family profession for centuries, klezmers failed to produce a second generation in America. Eager to join the New World, the new immigrants preferred the sounds of Tin Pan Alley (and its lesser-known Yiddish version), early jazz, and swing. Yiddish theater, literature, and popular songs—think the Barry Sisters, Jan Peerce, and Molly Picon—initially fared better but fell out of vogue not long afterward. By the 1930s, there was little work for Jewish wedding musicians. Many moved out of klezmer groups and into Broadway pit orchestras and the great American dance bands. By the 1940s, it was almost impossible to find a musician who professed to be a full-time klezmer. And, after the war, it was almost impossible to find any klezmer music at all. Instead, the Jewish wedding and Catskills circuits resounded with the sound of rumba, mambo, and Israeli folk songs. It's not surprising, then, that in 1964 the Jewish klezmer violinist was cast as the supreme symbol for a lost pre-Holocaust world in the ironic Broadway tribute *Fiddler on the Roof*.

BUT BY THE MID-1970S, STARTING with scattered performances at Greek nightclubs and folk festivals, a committed band of Jewish musicians immersed in Balkan and American folk music and jazz slowly began to breathe life back into klezmer music. Early records and folk festival performances soon gave way to a flood of recording sessions, gigs at New York's hip music clubs, international festivals across three continents, and—the ultimate sign of arrival—a new category

at Tower Records. Although some performers mix labor anthems and leftist slogans into their work, trying to maintain an image of the music as politically subversive or radical, its incorporation into the establishment continues; in the past year alone, two academic conferences have examined klezmer history and musical structure.

HOW SUCCESSFUL WILL THIS REVIVAL be? Not even the greatest of Yiddishists now argues that Yiddish will make a comeback because no number of college Yiddish courses or rescued Yiddish books can transform a vanishing language into the *mame-loshn* (mother tongue) of American Jews. But the future



of the music and the rest of Yiddish culture is less apparent. Unlike language, music does not require a large learned vocabulary. And American Jews have long been searching for a middle path between joining a religious world they find bewildering and losing their Jewish identity through total assimilation. Klezmer music

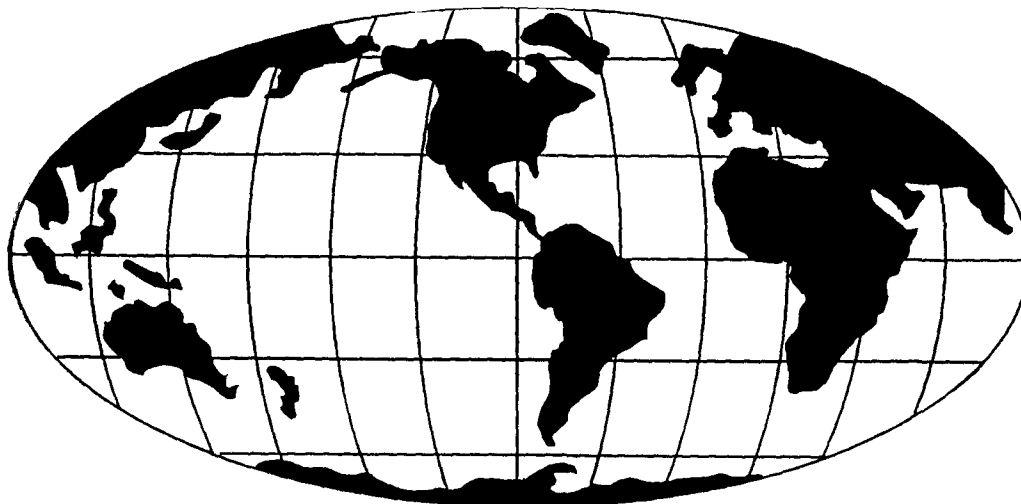
could provide the solution. The music and dances of Eastern Europe are readily accessible and even vaguely familiar to American Jews. To understand klezmer music you need only be pulled into a swirling circle of dancers.

ALREADY THERE ARE STRONG signs that klezmer has penetrated the American cultural mainstream. Audiences, flocking to sold-out klezmer concerts featuring Itzhak Perlman and top klezmer bands, are dancing in the aisles at the Kennedy Center and Carnegie Hall. Klezmer music may soon join bagels and Yinglish as a pleasantly derailed and deethnicized American cultural commodity. Will klezmer lose its passionate energy as it passes through this process? Can it remain uniquely Jewish even as its ranks swell with non-Jews clamoring to learn and perform this music? What will come of the claim by some European musicians that klezmer is not even Jewish but rather universal folk music? Perhaps the clearest answer came during an actual wedding that took place at this year's KlezKamp. Out of all the concerts, clinics, and classes held during the course of the week it was at that wedding that the music came most alive. For it was then, as we all danced in celebration, that klezmer's age-old significance was restored.

JAMES LOEFFLER

JAMES LOEFFLER is an ethnomusicologist and performing musician.

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